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# THE LEAGUE OF NATIONS

AND MISCELLANEOUS ADDRESSES

BY  
WILLIAM D GUTHRIE



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To  
NICHOLAS MURRAY BUTLER,  
PRESIDENT OF COLUMBIA UNIVERSITY,  
WHOSE WORLD-WIDE DISTINCTION AS EDUCATOR, PHILOSOPHER,  
PUBLICIST, PATRIOT AND ORATOR HAS BROUGHT SO MUCH  
PRESTIGE TO AMERICAN SCHOLARSHIP.





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## ERRATA

- Page 19, at end of line 7, strike out "de".  
 Page 64, line 14, strike out "the" before "Members".  
 Page 65, at end of line 4, insert comma.  
 Page 142, line 7, strike out "à nous".



## THE PROPOSED LEAGUE OF NATIONS <sup>1</sup>

THE international crisis which the world has been facing since the signing of the Armistice on November 11th is of the gravest concern to the American people and most vitally affects their interests and welfare. The hardest of all the tasks and the most difficult and complex of all the problems created by the World War must now be dealt with. It is, therefore, eminently fitting that the New York State Bar Association should assign for discussion at this annual meeting the subject of the *Development of International Law*, to the end that its members, so far as lies in their power, may voice and contribute the expert opinion and deliberate judgment of the profession. I have been requested to open the discussion, and to outline the conditions that confront us.

The Peace Conference meets to-day at Paris for the first time in full attendance. Our minds must at once turn to the all-engrossing and perhaps all-embracing subject of a League of Nations to be taken up by it, and we must realize that the principal terms and provisions of this proposed League, which may fix the future foreign policy and perhaps determine the internal policy of our country and which will immeasurably affect its

<sup>1</sup>Remarks at the annual meeting of the New York State Bar Association held in New York City on January 17-18, 1919 ml

destinies, have not yet been disclosed. Hence, there is unavoidably much vagueness and uncertainty as to the concrete questions of international law which we are now called upon to consider.

The phrase "League of Nations" is most indefinite and elastic. In and of itself it means nothing. But it now covers generically innumerable plans which agree in few particulars and vary from one extreme to the other. On the one hand, we find the conservatives, who advocate a League which shall practically be confined to an agreement or convention among the Allies and the United States, and which shall guarantee the co-operation necessary to enforce the terms of peace, and settle, as among themselves at least, the many disputed questions of international law and of the rights and obligations of belligerents and neutrals that have arisen during the present war.

On the other hand, and at the other extremity, we find, for example, distinguished French writers advocating a complete federation of the nations of the world, with full legislative, executive and judicial powers vested in a controlling body, and with compulsory arbitration without limitation or exception even as to questions involving national honor and dignity. This confederation would have power, as these publicists propose, to enforce its decrees by fourfold sanctions, that is, (1) diplomatic sanctions, (2) judicial sanctions, (3) economic sanctions, and (4) military sanctions. They contemplate also vesting the power of taxation in some form if requisitions are not met. With the rigidity of logic that admits of no compromise or

concessions to practical experience or necessity, these French publicists, as well as many of our own writers, do not hesitate to urge what in final analysis would involve a surrender of sovereignty and independence on our part and the assumption of an obligation to take the law from, and to make war at the order of, a body of men sitting and functioning principally in Europe, a majority of whom would be foreigners and probably quite unfamiliar with American conditions and interests. Indeed, our own so-called League of Free Nations Association in its latest pronouncement practically advocates establishing an international supergovernment, having a central council or parliament with the broadest legislative powers and the most indefinite jurisdiction, extending apparently even to "the assurance of the political, civil, religious, and cultural rights of minorities," and "the combined military power of the whole used as an instrument of repression." This Association candidly confesses that its scheme will demand profound changes and the doing of "unprecedented things," and that in its judgment "the price of secure nationality is some degree of internationalism."

I mention these extremities of the subject, between which lie all kinds and varieties of schemes for a League of Nations, so as to emphasize at the outset of this debate that any resolution by us to the effect that this Association is in favor of or is opposed to the project of a League of Nations, unless most carefully qualified and restricted, will be variously interpreted or represented, and perhaps distorted. To different persons



and different societies and different countries the phrase "League of Nations" has come to signify or connote quite different, and very incompatible, conceptions.

I conceive also that it may be helpful to recall at the outset some heretofore recognized landmarks in our national history and some simple and fundamental considerations. This will enable us to see more clearly the points from which we may be departing and the dangers which may lie directly ahead of us if we break with the past. The three fundamental points which have formed the basis of the American view of international law, and to which I shall later advert, are (1) the authority and force of international law, (2) the sanctity and value of treaties, and (3) the traditional foreign policy of the United States.

It should be premised that the Association has heretofore approved and undoubtedly still approves the practice of settling the principles and rules of international law by conventions, conferences, societies, or leagues of nations, and of giving such principles and rules binding force and effect by treaties, and that it has approved and still approves the proposition to establish a permanent international court of arbitral justice for the determination of most international disputes and controversies. We should adhere to these views. We have not, however, expressed our opinion upon any of the innumerable schemes for a League of Nations which are about to be urged upon the attention of the Peace Conference, and we should not commit ourselves to any of them in the gloom of our

present ignorance. As I have already intimated, few, if any of us, have any idea as to what kind of a League of Nations the American representatives in France approve and intend to urge upon the Peace Conference for its acceptance and adoption.

Nevertheless, the force of circumstances compels us to recognize that some form of a League of Nations should be created by the pending Peace Conference. The President has certainly committed us to such a league. It may be limited to fixing the terms of peace and formulating covenants and guaranties for their observance, whilst also settling important and far-reaching questions of international law, or it may go very far beyond this; but whatever its terms and provisions may be, it will inevitably affect our destinies and the destinies of our children, beneficently or injuriously as experience alone can demonstrate. Let us trust that any league that may finally emerge from the Paris Peace Conference will not attempt to commit us so far that it cannot secure the approval of the Senate, whose advice and consent the Framers of our National Constitution wisely provided must be obtained before the Nation should be committed and its faith and honor plighted in and by treaties with other nations.

Under the form or name of a League of Nations infinite good may undoubtedly be accomplished by the pending Peace Conference. It can permanently settle many extremely difficult and delicate questions of international law relating to the powers of belligerents, the rights of neutrals, the

so-called freedom of the seas in peace and war, blockade, contraband, search, seizure, reprisal, etc., which have arisen during the past four and a half years and which the permanent interests and future peace and happiness of mankind demand shall be now authoritatively adjusted. These questions may be of vital importance to us in the future whether we be belligerents or neutrals. The published and unpublished correspondence between our Government and Great Britain and the Netherlands, relating to many as yet unsettled disputes, would fill a volume and require weeks, if not months, of exhaustive investigation and discussion. A great service could, therefore, be rendered to humanity if these controversies, for instance, were to be finally determined and the relative rights and obligations of the disputants under international law were to be now definitely fixed by international agreement.

No subject is so well calculated to attract the publicist, the statesman and the historian as that of a League of Nations. Projects for universal or perpetual peace have engaged the sympathies and the talents of the best minds and noblest characters of every age; and a long record of attempts, of failures and of disillusion both instructs and warns us. In the past, there have been numerous Leagues of Nations of varying nomenclature, whose object and purpose were to abolish war or at least to diminish occasions for war, and none of the recent projects that I have read, and I have tried to read all available here,

contains anything substantially new. Thus, as Lecky tells us:

The recognition of some universal principle of political right powerful enough to form a bond of lasting concord has always been a favourite dream with statesmen and philosophers. Hildebrand sought it in the supremacy of the spiritual power, and in the consequent ascendancy of the moral law; Dante in the fusion of all European States into one great empire, presided over in temporal matters by the Caesars and in spiritual by the Popes; Grotius and Henry IV. of France, in a tribunal like the Amphictyonic assembly of ancient Greece, deciding with supreme authority international differences; etc.

Although human nature has been profoundly stirred by the horrors and outlawry of this war, we cannot assume that it has been radically changed. There have survived numerous unsettled matters likely to create conflicting interests, controversies, selfish and unreasonable demands. We have our own imperative problems of immigration, tariff, reciprocity, etc., and we must reserve the right to decide them for ourselves. We should not forget that economic and racial considerations at times overthrow reason and abstract justice; and we found this to be the case when it became necessary for us to violate a treaty with China, as evidenced by the opinions of the Supreme Court in the famous *Chinese Exclusion Case*. Would we then have tolerated any foreign interference or dictation, or any attempts forcibly to compel us to admit Asiatics against the protests of our own people? That question must answer itself.

The possible occasions for differences on our part even with England and France are many. We may have acute controversies with our neighbors to the south. It is impossible to foresee what the future holds in store for us. But if history teaches Americans any lesson, surely it is that our situation is unique, and that we should hesitate long before deliberately vesting in foreigners the right to dictate our national or international policy or conduct, and should in any event refuse to run the risk of becoming involved in the local quarrels of Europe, Africa and Asia. American interests and American honor may draw us into particular controversies between foreigners, and we may take sides in pending disputes, as we did in the present war, but let us always retain freedom of action, and bear in mind the fundamental distinction between temporary adventures and alliances, advisedly and intelligently entered upon from time to time on their merits, and a permanent alliance, such as many propose under the title of a League of Nations, which would bind us to act under circumstances quite beyond our power to foresee or control. The distinction is as broad as the ocean, and is as vital to-day as it was in the days of Washington and Hamilton.

The subject of the authority and force of international law, so instructively treated by Mr. Hill in the annual address, opens a wide field for polemics and for the exploitation of the conflicting theories of the various schools of international jurisprudence. The ablest writers curiously differ

among themselves as to the very definition and as to the true nature and source of international law. I shall not attempt to do more than recall the definition of Lord Russell of Killowen, that international law is "the aggregate of the rules to which nations have agreed to conform in their conduct towards one another." The agreements to which he thus referred are express or implied: express as in the case of treaties and international conferences, conventions, or leagues; implied as evidenced chiefly by the established custom or practice of nations. Salmond of New Zealand, a very learned and distinguished author, concisely defines the origin and the essence of these implied international agreements in the following language. "By observing certain rules of conduct in the past, states have impliedly agreed to abide by them in the future; by claiming the observance of such customs from other states, they have impliedly agreed to be bound by them themselves."

It has often been contended since August, 1914, that international law has turned out to be a failure and an illusion, and that it has no force in and of itself because it has no physical power behind it and no sanctions whereby obedience to its rules can be enforced or disobedience punished, and that, therefore, we must now create an international police force. Yet we may confidently assert that no reflecting mind doubts that there has been and is now a strong and pervading moral force behind international law, which springs from the conscience and honor of civilized nations, and which is a real and compelling power. The best

statement of the American ideal and doctrine upon this point is to be found in the language of President Cleveland in his famous special message of 1893 addressed to the Congress of the United States, which then received the unqualified concurrence of that body and the widespread approval of the Nation. It is as follows:

The considerations that international law is without a court for its enforcement and that obedience to its commands practically depends upon good faith instead of upon the mandate of a superior tribunal only give additional sanction to the law itself and brand any deliberate infraction of it not merely as a wrong, but as a disgrace. A man of true honor protects the unwritten word which binds his conscience more scrupulously, if possible, than he does the bond, a breach of which subjects him to legal liabilities, and the United States, in aiming to maintain itself as one of the most enlightened nations, would do its citizens a gross injustice if it applied to its international relations any other than a high standard of honor and morality.

Yet many urge that the war has demonstrated, as some phrase it, that international law cannot operate effectively in the absence of a preponderant military force to compel obedience to its rules. The arguments in support of this view generally cite the fact that Germany and the Central Powers violated and defied all the rules of international law, and that the German Emperor, with the concurrence of his Chancellor, declared to Ambassador Gerard in May, 1916, that there was no longer any international law. But no declaration on the part of the Germans could overthrow international law, any more than the declarations

of any band of pirates, outlaws, or rioters could overthrow municipal law. As matter of fact, notwithstanding the action and declaration of Germany, the established rules of international law were never more generally recognized, insisted upon and observed among civilized states than at the present time and during the past four and a half years.

Was it not indignation at the brutal and reckless disregard of international law by Germany and her allies that solidified and animated the conscience of the civilized world and united twenty-two free nations against them? Was it not the repeated violations of international law that brought us into the war? Was it not in defense of our rights under international law that the American Army and the American Navy have fought and sacrificed? Was it not just resentment of the savage disregard by Germany and her allies of all the humane rules of international law that inspired the patriotic spirit of our whole people and made possible the demonstrations of national unity and effort that still thrill and exalt all Americans?

We went to war in order to uphold and enforce international law, and the victory we are celebrating is the vindication of international law. It is reasonably certain that no power will dare in the future to affront the conscience of the world by repudiating or violating the established principles and rules of international law. And no League of Nations with a military force at its command can make this any more manifest.

So also in regard to treaties we are told by



some that treaties have no longer any sanctity or value, and that they will not be observed or enforced hereafter unless sanctions are provided and unless there be an international armed police force preponderant enough to compel obedience to treaty provisions and to punish violations thereof, or at least an agreement pledging us to go to war whenever one or more nations shall dare to violate the provisions of any treaty or of the proposed League of Nations

On the contrary, the present war and its victory have vindicated the obligation of treaties and of the plighted faith and honor of nations infinitely more than ever before. In fact, the vindication of the sanctity and value of treaties has been most emphatic. Witness valiant and noble France, without a moment of hesitation or fear, facing the awful catastrophe of war and national ruin in order to keep her treaty with Russia. Witness heroic and sublime Belgium braving destruction by and slavery to the savage and brutal Germans in order to keep a treaty obligation to maintain her neutrality. Witness steadfast, superb, faithful and glorious England — and by England I, of course, mean the great British Empire including valiant Canada — refusing to break her faith plighted in an almost superannuated treaty in order to avoid the greatest and most disastrous war in her history — a war for which she was not prepared — a war that threatened and might involve the destruction of her Empire. There was an inexpressible moral grandeur, nobility and sublimity in England's sending that small and "contempti-

ble," but now immortal, army to Belgium in August, 1914, to face tenfold its number, to fight and die in a strange land, that the honor and faith of England, plighted only in and by a treaty with a small and weak nation, might be kept inviolate and stainless, and deliberately facing possible destruction for a mere "scrap of paper," as that treaty was cynically and criminally called by the German Chancellor.

The truth is that the sanctity and force of treaties are to-day more firmly established than at any time in the history of the world, that treaty obligations are more sacred and binding than they ever were, and that we Americans can safely continue to rely upon their effectiveness in our dealings and intercourse with other civilized nations.

In support of the argument of the alleged necessity for a military power to enforce treaties and the decrees of an international court of arbitral justice, the example is frequently mentioned of the Supreme Court of the United States in the exercise of its original jurisdiction over controversies between two or more states. The supposed analogy, if we admit its existence, seems to me to refute the argument. The Supreme Court has no armed force at its command to compel obedience to its decrees by a recalcitrant state. Their enforcement rests, in final analysis, and the Framers of the Constitution so contemplated and intended, upon the moral power of public opinion. They have never yet been executed by or through force. Under our system of national government,

the judicial branch is the weakest in the physical sense, as Hamilton pointed out in the *Federalist* that it would be, but in the moral sense it has proved to be the strongest. Several early cases clearly showed that a state could with impunity refuse to obey the orders of the Supreme Court if the executive power of the Nation were not ready and willing to support the court and enforce its decrees. The historical incident when President Jackson mocked the Supreme Court in connection with a decree against the State of Georgia is familiar to all. He publicly taunted Marshall, the great Chief Justice of the United States, with the inability of the court to execute its own decree in the *Worcester* case, and it was never executed. In an equally well-known historical case, growing out of the anti-slavery agitation that preceded the Civil War, the Supreme Court declared that if the State of Ohio saw fit to refuse to discharge a duty expressly imposed upon it by the Constitution, there was no power delegated to the National Government, either through the judicial department or any other department, to use any coercive means to compel obedience.

We have happily advanced far beyond this narrow view of the power of the Supreme Court. If a sense of honor and duty or of constitutional morality did not now prompt obedience by a state to a mandate of the Supreme Court, public opinion would undoubtedly compel the President to employ all the resources of the Nation to enforce compliance therewith. We should not, however, overlook the fact that in the recent case

of *Virginia* versus *West Virginia*, referred to by President Hughes in his address yesterday, the Attorney-General of West Virginia, on the hearing of his demurrer, somewhat defiantly argued that his state could not be compelled to obey any decree the court might enter. And the problem as to how that state can be compelled to pay the judgment which has been entered against it is now being considered by the court.

I am recalling these historical incidents in order to emphasize the fact that the Supreme Court has no police or army at its command to enforce its decrees, and that it would be as absolutely helpless as it was in the days of Marshall if the President or the Congress were hostile and saw fit to refuse or were unwilling to aid the court in executing its decisions. It would have to rely upon the moral power of public opinion throughout the Nation, and that this would be abundantly sufficient and effective cannot be doubted.

The lesson derived from these examples most persuasively shows that the proposed international court of arbitral justice could reasonably be expected to function with great and constantly increasing moral power and prestige without any military force and without the assistance of the fourfold sanctions of the French project to which I have referred, just as fully as our Supreme Court has been able to function for a century and a quarter with constantly increasing prestige and power and reverence.

It should be reasonably beyond dispute and un-

necessary to argue that there is a traditional foreign policy of the United States. At the First Hague Conference in 1899 and again at the Second Hague Conference in 1907, our Government deemed it necessary to file an express reservation in the *procès-verbal* declaring to the world that —

Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign State; nor shall anything contained in the said Convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions.

This traditional foreign policy, dating from the days of the great and inspired statesmen who founded our National Government, has been ratified and followed by generation after generation of Americans. It may be, of course, that conditions have fundamentally changed and are quite beyond anything contemplated by Washington or Hamilton. It may be that we can no longer remain separate and aloof, but must allow ourselves to be drawn into the vortex of the quarrels and conflicting interests of the other peoples of the world. It may be that it is our fate or destiny, upon some theory of commercial interests or humanitarianism, to be hereafter involved in all the important international conflicts that may arise in Europe or Africa or Asia. It may be that we of this generation, who have inherited the tradition of aloofness and separation and who are

the trustees of all future generations of Americans, are justified in now undertaking to maintain order and peace throughout the world at whatever cost of American life and treasure. I verily doubt it all. But before we assume any such extensive and far-reaching obligation and duty, and thereby mortgage our future and the future of our children, it is certainly not too much to demand great caution and deliberation in order that the Nation shall not be committed to any particular League of Nations until it has been fully advised as to its terms and provisions and has had full opportunity to study and discuss them and weigh their obligations. At least, due opportunity should be first afforded to our representatives in the Senate to give their advice and consent, for we are still essentially a representative form of republican government and the Constitution still regulates the treaty-making power.

Favoring, as I believe most of us do, the general idea of a League of Nations, which shall settle important questions of international law and establish a permanent court of arbitral justice, and recognizing the probable necessity of such a League in some form, let us nevertheless trust that its final terms will not impair the sovereignty and independence of the Nation and, above all other considerations, that it will not compel us to go to war for any cause unless the Congress shall at the time determine on the merits of the actual question that a matter of paramount national duty, honor, or interest is involved sufficient in its judgment to justify war and the sending of

our soldiers and sailors if need be to the ends of the earth to fight and to die.

The formulation of the terms of this League of Nations may turn out to be very much more important to our vital interests and welfare than the framing of any state constitution or, indeed, the Federal Constitution itself, for it may irrevocably commit our national honor to ruinous policies, duties and obligations. Certainly, this Association would treat as foolhardiness and recklessness in the extreme a proposition to approve a state constitution most of the provisions of which were as yet undisclosed and unformulated. When the terms of the proposed League of Nations have been finally announced, the members of this Association can consider them with the care they demand, and, if necessary, can call a special meeting at which the propositions can be thoroughly and exhaustively analyzed and debated. In the meantime, it is hardly necessary for us precipitately to approve the mere theory or principle of a League of Nations in the abstract, and any such hasty action on our part at the present crucial time is certain to be misinterpreted as favoring some plan or other called a League of Nations which is not before us and of which we may have little or no definite conception.

In conclusion, I would venture to add a word on the subject of internationalism, which in theory is so attractive to many, some of whom are inveterate pacifists, but which in practice, as many believe, left France and England unprepared for war in 1914 and on the verge of disaster. It

seems to me that not a step should be taken committing or covenanting our country which shall tend towards internationalism in the sense that its most zealous advocates seem to conceive it, or which shall tend in any degree to diminish what we cherish as nationalism or independence in contradistinction to internationalism or the interdependence of nations. We are altogether too proud of the display of nationalism by our people during the past two years, and of the noble spirit engendered thereby of service and of sacrifice displayed by all classes and in all stations of life, as well as of the splendid consecration and heroism born of nationalism that brought us so much glory and exaltation, and which flamed so high and bright at Château Thierry, at St Mihiel, in the Argonne Forest, on the fields of Flanders, on the high seas. American nationalism is synonymous with American patriotism. It secured us an imperishable glory for which we are very grateful and proud. I apprehend that in pursuing the philosophic dream of internationalism, or humanitarianism, or the poet's Brotherhood of Man, we would surrender or lose much that we now regard as priceless and worth all the sacrifices that we have recently made of American life and treasure.

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The Committee on International Arbitration submitted in its report dated January 17th, 1919, for adoption by the Association the following resolution (Mr. Butler dissenting):

Resolved that this Association repeats its previous declarations in favor of the establishment



of a League of Nations with an international court, with provision for partial disarmament and for an international police which shall have power to enforce the decisions of the international court.

After the discussion of the subject by Mr. Guthrie, Judge Clearwater, Mr. Beck, Mr. Coudert and Mr. Wheeler, a majority of the members of the Committee on International Arbitration present at the annual meeting accepted the following substitute presented by Mr. Guthrie, which was thereupon unanimously adopted, viz :

Resolved that whilst this Association adheres to its approval heretofore expressed of the settlement of the principles and rules of international law by agreement through conventions, conferences, or leagues of nations, as well as the creation of a permanent court of arbitral justice and a permanent council of conciliation for the hearing and determination of international disputes, it is not prepared to express its judgment upon any one or more of the various plans for a League of Nations which may be urged upon the Peace Conference at Paris, and must withhold any action thereon until the terms and provisions of the plan finally recommended and urged by the American representatives are fully published.

## THE COVENANT OF THE LEAGUE OF NATIONS

AS EMBODIED IN THE VERSAILLES TREATY OF PEACE  
WITH GERMANY, DATED JUNE 28TH, 1919 <sup>1</sup>

THE ratification or rejection of the Covenant of the League of Nations as made part of the Versailles Treaty of Peace with Germany, dated June 28th, 1919, presents the most important question that has ever been directly submitted to the American people for their action. Many believe that this issue involves the preservation of the independence and freedom of action of the United States in its relations with foreign countries and the perpetuation of the sound foreign policy established by President Washington and consistently adhered to ever since; and many are convinced that, if the Senate should ratify the League Covenant, the United States would thereby assume obligations to foreign countries and entangling alliances, which might bring disaster if the Nation duly fulfilled its treaty obligations, and national dishonor if it repudiated them.

It should be emphasized at the outset that the difference between the two great political parties on the subject of the nature and effect of the treaty obligations of the United States is fundamental and irreconcilable. The position of the Republican party and its candidates and of the

<sup>1</sup> A review prepared and published in September, 1920, during the political campaign of that year

majority of the Senate is that, if the United States assumes a treaty obligation, it must be with the understanding that it shall be fulfilled in the utmost good faith, however burdensome and costly, whilst the position of the Democratic party and its candidates appears to be that, no matter how plainly a treaty obligation may be expressed, it need not be fulfilled at all, when the contingency or emergency calling for performance actually arises, unless the Congress in office at the time sees fit in its then judgment or discretion to do so, and that under the Constitution of the United States every American treaty, even if it be a treaty of offensive or defensive alliance, as the League Covenant in effect is, implies a reservation that it is to be obligatory on the Nation only if Congress shall see fit to fulfill its obligations. It is argued that this necessarily follows from the fact that under the Constitution of the United States treaties which are not self-executing can only be performed by means of legislative action by Congress and that Congress alone is empowered to declare war, etc ; and it is insisted that foreign nations must be presumed so to understand our treaty obligations. But the Republican answer to this argument is that the treaty-making power may constitutionally bind the United States to declare war whenever war shall become necessary in order to fulfill an obligation created by a duly ratified treaty.

Unfortunately, the question as to the true interpretation and import of this momentous document, the most important, far-reaching and complicated

treaty ever proposed to be made on behalf of the United States, is being confused and embarrassed by charges of partisanship and personal hostility against those Senators—Republican and Democratic—who have solemnly professed their conviction that the covenants of the League would inevitably imperil the future peace and safety of the Nation, would embroil it in all the racial, religious, traditional and economic disputes and antagonisms of Europe, Africa and Asia, and would obligate it to go to war in order to preserve the territorial integrity and existing political independence of all the members of the League or to enforce the decisions of the Council or Assembly of the League, irrespective of the merits of any particular controversy. Furthermore, domestic issues and cross-currents, prohibition, labor, taxation, etc., are also gravely confusing and complicating the situation, and may influence the vote of many citizens.

It must, therefore, be recognized to be of primary importance to direct and concentrate the efforts of the Republican party during the remainder of the present political campaign so that the voters throughout the country shall be made to appreciate the paramount necessity of disregarding for the time being all other points and of voting as they may be convinced in regard to the meaning and effect of the League Covenant. There is no danger that intelligent and patriotic American citizens will vote in favor of the League Covenant without adequate reservations plainly eliminating and excluding all the dangerous obligations and entangling alliances which it now contains, if they

can only be made to realize what its various covenants really mean, and the obligations which they would plainly create and impose.

Although the full debates in the Senate and in the forum of public opinion since February, 1919, ought to have educated all classes of the electorate and made them familiar with the provisions of the Covenant of the League of Nations and of the reservations proposed by the Senate, there is, nevertheless, surprising ignorance as to the obligations created by the League Covenant and as to the reservations which were deemed essential by a majority of the Senate after many months of study and debate. Much that we find in newspapers and periodicals and in the speeches of the Democratic candidates for President and Vice-President can be explained only upon the assumption that their authors have not taken the pains to study the League Covenant and the Lodge reservations and have no definite conception of a treaty obligation as generally understood in international law. Perhaps, the most effective method of propaganda among the American electorate would be to see to it that each voter was furnished a copy of the League Covenant and of the Lodge reservations, and urged to read them. If the voters of the country can be made to appreciate that both President Wilson and Governor Cox insist that the Lodge reservations impair the integrity of the League Covenant as a whole and nullify the covenants to which they relate, they can then candidly ask themselves whether the reservations are or are not necessary to protect American

independence and American rights. Let each voter ponder the fact that, if these reservations would nullify the League Covenant, it must obviously follow that without the reservations the obligations they seek to exclude or eliminate would exist and be imposed upon the United States. It will only be necessary for any intelligent voter to read these documents in order to perceive how far-reaching and dangerous are many of the obligations created by the provisions of the League Covenant, and how essential are the Senate reservations if the United States is to be kept out of unnecessary wars, and is to remain independent in its foreign relations, without entangling alliances, and free from the domination of a supergovernment Council and Assembly controlled by a combination of European and Asiatic countries.

Before discussing the interpretation and effect of the principal provisions contained in the League Covenant, it seems appropriate to review as briefly as practicable (1) the treaty-making power under the Constitution of the United States, (2) the obligation of American treaties, and (3) the Monroe Doctrine. Although these subjects are or ought to be familiar to all Americans, it may be helpful to recall some of their settled underlying and elementary principles, and to refute some current errors and misrepresentations.

## I

THE TREATY-MAKING POWER OF THE  
UNITED STATES

The Federal Constitution has heretofore been generally cherished by the American people and admired by foreigners for its wise system of limitations or checks upon executive and legislative powers. Its spirit is opposed to autocratic and arbitrary powers in any branch of the Government, and it did not intend that the President should be an elective autocrat. Therefore, Article II, section 2, of the Constitution, although empowering the President to make treaties with foreign nations, required that this power should be exercised by him only "by and with the advice and consent of the Senate," and "provided two-thirds of the Senators present concur." In the *Federalist*, which used to be "seriously and reverently called the Bible of Republicanism," Hamilton explained that the Senate was vested with part of the treaty-making power because "it would be utterly unsafe and improper to intrust that power to an elective magistrate of four years' duration," that "the history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States," and that "it must indeed be clear to a demonstration that the joint

possession of the power in question, by the President and Senate, would afford a greater prospect of security than the separate possession of it by either of them." Indeed, President Wilson himself, in his lectures at Columbia University in 1907 on the subject of "Constitutional Government in the United States," delivered and published while he was still president of Princeton University, declared that a President "may himself act in the true spirit of the Constitution and establish intimate relations of confidence with the Senate on his own initiative, not carrying his plans to completion and then laying them in final form before the Senate to be accepted or rejected, but keeping himself in confidential communication with the leaders of the Senate while his plans are in course, when their advice will be of service to him and his information of the greatest service to them, in order that there may be veritable counsel and a real accommodation of views instead of a final challenge and contest." He then added that "the policy which has made rivals of the President and Senate has shown itself in the President as often as in the Senate, and if the Constitution did indeed intend that the Senate should in such matters be an executive council, it is not only the privilege of the President to treat it as such, *it is also his best policy and his plain duty.*"

Until the present time, it had been regarded as the fixed policy of the United States to avoid permanent entangling alliances with other countries and particularly with European nations. This policy was founded by President Washington and



followed by his successors as essential to the peace and safety of the country. As Washington solemnly declared in his immortal Farewell Address, "the great rule of conduct for us in regard to foreign nations [is] to have with them as little political connection as possible", "Europe has a set of primary interests which to us have none or a very remote relation", "she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns"; "it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics or the ordinary combinations and collisions of her friendships or enmities," and "it is our true policy to steer clear of permanent alliances with any portion of the foreign world."

Washington then put the following questions, which are as pertinent and illuminating in 1920 as they were in 1796, and which each voter should now put to himself or herself:

Why quit our own to stand upon foreign ground?  
 Why, by inter-weaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalry, interest, humor, or caprice?

Jefferson many years afterwards wrote to President Monroe that "our first and fundamental maxim should be never to entangle ourselves in the broils of Europe; our second never to suffer Europe to intermeddle with cisatlantic affairs."

And President Wilson in April, 1916, even after the horrors of the German invasion of Belgium and Northern France and of the "Lusitania"

incident, when over one hundred American citizens — men, women and children — were murdered by Germany on the high seas, solemnly declared:

God forbid that we should ever become directly or indirectly embroiled in quarrels not of our own choosing and that do not affect what we feel responsible to defend.

As a matter of constitutional law, there should be no doubt that a treaty of alliance, offensive or defensive, even if calling for a declaration of war, is within the treaty-making power of the President and the Senate, although the performance of such a treaty obligation might necessarily require action by the Congress. The President's legal advisers so advised him, as shown below, when they certified that "it is not doubted that by treaty the United States could agree to *declare* war under certain circumstances," and a committee of the Senate reported on July 29th, 1919, that the proposed separate treaty with France, dated June 28th, 1919, was constitutional although it provided for war in a covenant that "the United States of America shall be bound to come immediately to her [France's] assistance in the event of any unprovoked movement of aggression against her being made by Germany."

The Treaty of Alliance with France of February 6th, 1778, was intended to be and was ratified by the Constitution, was made by it the supreme law of the land, and was fully recognized as binding until 1798. No treaty of the United States has ever yet been held unconstitutional, and none is at all likely to be so held which relates solely to

a subject clearly within the treaty-making power under international law, such as treaties of alliance, offensive or defensive. It would be amazing if any competent statesman should now advance the proposition that the United States could not make a binding treaty of alliance, offensive or defensive, because under the Constitution the power to declare war was vested in the Congress, when in the Declaration of Independence the new nation proclaimed to the world that it had "full power to contract alliances" and shortly afterwards entered into the Treaty of Alliance with France.

#### THE OBLIGATION OF TREATIES

One of the principal objects which the Framers of the Constitution of the United States had in mind at the Philadelphia Convention of 1787 — perhaps to them the most urgent and imperative — was to render all treaties made by the Nation obligatory and enforceable. The Treaty of Peace of 1783 with England had been and was then being constantly and shamefully flouted and violated. As Fiske pointed out in narrating the critical period between 1783 and 1789, "Jefferson, at Paris, was told again and again that it was useless for the French Government to enter into any agreement with the United States, as there was no certainty that it would be fulfilled on our part; and the same things were said all over Europe." It was in order to remove this reproach and incapacity, so derogatory to the honor, dignity, self-respect and best interests of any civilized nation, that the Constitution vested the treaty-making power of

the United States in the President acting "by and with the advice and consent of the Senate," forbade the States from entering into any treaty, and provided that "all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."

The Republican platform declares as the position of the party and of its candidates that —

A scrupulous observance of our international engagements when lawfully assumed is essential to our own honor and self-respect, and the respect of the other nations.

The Democratic platform and the Democratic candidates, however, avoid any declaration as to the duty of the United States to perform its treaty obligations. On the contrary, the platform in effect reaffirms the attitude of President Wilson that however clear and "absolutely compelling moral obligation" might be created by a treaty, Congress would, nevertheless, always be "absolutely free" to perform or not to perform such obligation as in its judgment it saw fit.

As is familiar to all students of our history, the Framers of the Federal Constitution intended that *all* treaties duly made under the authority of the United States should become obligatory without the approval of Congress and whether or not they were in and of themselves self-executing or required legislative action by Congress. It was well known to them that most treaties would necessarily require legislative action in order to enable the Nation to fulfill their obligations, and, for example, that in England treaties, although

made by the King through his ministers, were generally being performed by means of legislative action by Parliament.

The obligatory nature of treaties with foreign nations ought, it is submitted, to be regarded as an elementary doctrine and a self-evident proposition of political morality, yet it is being cynically challenged in one sophistical form or another, and many citizens are being misled and confused by the pretense that somehow under the Constitution of the United States a treaty is not binding upon Congress, although binding upon the other branches of the Government; or, stated in other words, that a treaty duly made by the United States with a foreign nation, expressly declared by the Constitution to be "the supreme law of the land," is not supreme at all so far as Congress is concerned and is not obligatory upon it whenever it is called upon to fulfill any of its obligations. Such seems to be the conception of Governor Cox, who is being seriously urged as competent and qualified by learning and character to fill the great office of President of the United States. He apparently conceives that the Nation could not become engaged or embroiled in war with foreign nations under the League of Nations unless Congress, which alone is vested with the power to declare war or to make appropriations, saw fit to declare war, and hence that Congress could in its discretion avoid war by refusing to act, even though war were stipulated for in a treaty. Assailing the Republican Senators for their contention that the League Covenant would clearly commit us in

many contingencies to go to war, his language in his speech of acceptance was as follows:

They hypocritically claim that the League of Nations will result in our boys being drawn into military service, but they fail to realize what every high school youngster in the land knows that no treaty can override our Constitution, which reserves to Congress and to Congress alone the power to declare war.

If this language means anything at all, it certainly means that, although the League Covenant may obligate us by its plain terms to go to war to enforce compliance with its covenants including, for example, the covenant in Article 10 to "preserve the territorial integrity and existing political independence of all the Members of the League," Congress would, nevertheless, not be bound to do so, and could repudiate the obligation. Yet "every high school youngster in the land" ought to be able to tell Governor Cox that Congress, if it refused under such circumstances to declare war, would violate the constitutionally pledged faith of the Nation, and ought to refer him to the elementary writers who have heretofore instructed the youth of the Nation as to the sanctity and inviolability of our treaty obligations. Thus, in Chancellor Kent's Commentaries, discussing the law of nations, this great American jurist stated as follows:

Treaties of peace, when made by the competent power, are obligatory upon the whole nation. If the treaty requires the payment of money to carry it into effect, and the money cannot be raised but by an act of the legislature, the treaty

is morally obligatory upon the legislature to pass the law, and to refuse it would be a breach of public faith. The department of the government that is intrusted by the Constitution with the treaty-making power is competent to bind the national faith in its discretion, for the power to make treaties of peace must be co-extensive with all the exigencies of the nation, and necessarily involves in it that portion of the national sovereignty which has the exclusive direction of diplomatic negotiations and contracts with foreign powers. All treaties made by that power become of absolute efficacy, because they are the supreme law of the land.

And in Dana's *Wheaton*, also a recognized authority on the subject of international law, we find:

If a treaty requires the payment of money, or any other special act, which cannot be done without legislation, the treaty is still binding on the nation, and it is the duty of the nation to pass the necessary laws. If that duty is not performed, the result is a breach of the treaty by the nation, just as much as if the breach had been an affirmative act by any other department of the Government.

It was on the very eve of the World War, at Independence Hall in Philadelphia, on July 4th, 1914, that President Wilson himself, in speaking of our treaty with England as to the Panama Canal tolls, thus spoke of our treaty obligations:

And so I say that it is patriotic sometimes to prefer the honor of the country to its material interest. Would you rather be deemed by all the nations of the world incapable of keeping your treaty obligations in order that you might have free tolls for American ships? The treaty under

which we gave up that right may have been a mistaken treaty, but there was no mistake about its meaning. When I have made a promise as a man I try to keep it, and I know of no other rule permissible to a nation. The most distinguished nation in the world is the nation that can and will keep its promises even to its own hurt.

And President Wilson, as recently as September 24th, 1920, in criticizing, through Secretary of State Colby, the Merchant Marine Act, generally known as the Jones Act, among other things emphatically declared as follows:

Such a course would be wholly irreconcilable with the historical respect which the United States has shown for its international engagements, and would falsify every profession of our belief in the binding force and the reciprocal obligation of treaties in general

Moreover, the Covenant of the League of Nations itself declares in its preamble that it is being entered into "in order to promote international cooperation and to achieve international peace and security" among other means by "*a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another*". But President Wilson and many of the American advocates of the League Covenant now practically assert that the United States would not be bound to respect any of the treaty obligations thereby created unless the Congress at the time being saw fit to do so. In other words, they assert that the United States can never be definitely bound by a treaty obligation to do or not to do any particular act, such as to go to war in defense of an ally, but that every



treaty obligation, of alliance or otherwise, is always subject to the option or discretion of Congress to perform or to refuse to perform in its judgment and discretion!

Furthermore, Governor Cox's "high school youngster" would also be able to tell him, what is always taught to students at the commencement of their studies, as the author of "First Steps in International Law" has well pointed out, that a nation that "openly violates the obligations of a treaty will incur the disgrace of infamy and the reproach of mankind."

It is true that President Wilson advances the plea that there is a difference between a moral and a legal obligation, and that treaties only import a moral obligation to perform the compacts they evidence, that is to say, to keep faith, because of the absence of any sanctions to compel performance. But whilst this view in a certain limited sense may be debatable, as matter of fact the League Covenant does provide sanctions, for, as we shall see below, in order to compel obedience to its obligations, "armed force is in the background" and any "State that violates the international covenant is supposed to be in a state of war against all the members of the League, and all are prepared to compel it to execute its obligations" and its covenants may be enforced by boycott and other coercive measures of economic pressure. Therefore, even within the conception and definition of President Wilson himself, the League Covenant provides sanctions for compulsion and punishment, and it creates a legal as

well as a moral obligation to perform its covenants. However, it will be readily recalled that President Wilson declared on August 19th, 1919, to the Senate Foreign Relations Committee that "a moral obligation is of course superior to a legal obligation, and, if I may say so, has a greater binding force" It surely must needs follow from this reasoning that it is mere sophistry to split hairs as to the difference in treaty-making between a legal and a moral obligation, for if a treaty obligation is not *legal* but *moral* and if a moral obligation is *superior* to a legal obligation, then all the more binding and compulsory must be the *moral obligations* which President Wilson and Governor Cox are urging the Nation to enter into and solemnly pledge the national faith and honor to fulfill

But the difference urged by the President does not exist, and, even if it did exist, would not apply to the League Covenant Under international law, every treaty obligation creates a legal obligation, and, furthermore, every treaty obligation assumed by the United States is a legal obligation both under international law and under the express terms of the Constitution itself . Otherwise, there would be no international law or law of nations at all. An ordinary treaty may not be enforceable by prescribed sanctions, such as a penal municipal statute usually provides, but, nevertheless, it creates a legal obligation to perform, which is recognized and established by international law, and its breach would be a just cause for a resort to war. As the Federalist

pointed out one hundred and thirty years ago — and it is equally true to-day — a violation or refusal to perform a treaty obligation is a breach of national faith and honor and may be “a just cause for war” No competent writer on international law has ever declared that treaties are merely moral and not legal obligations in the sense that their performance under international law would be optional, and that nations would be at liberty to disregard or repudiate them at will as their judgment or interests might dictate. Obviously, if any such doctrine obtained in international relations, the sanctity of treaties would become a byword of derision; treaties would then universally be regarded as worthless, and no one would have been justified in condemning Germany for considering her treaty with Belgium as “a scrap of paper” If Germany was “absolutely free to put her own interpretation” upon the Treaty of 1839 guaranteeing the neutrality of Belgium “in all cases that call for action,” as President Wilson declared on August 19th, 1919, we would be free to do if called upon to perform our obligations under Article 10 of the League Covenant, how could we consistently condemn Germany for repudiating her treaty obligation to Belgium and to the other signatories of the treaty and deliberately violating its provisions?

Although the legislative branch of most modern countries has the *power* to denounce treaties, to refuse further to perform them, and to pass valid legislation in conflict with their terms, this does not render treaties any the less obligatory. Cir-

cumstances may arise which will justify the exercise of such a power. The law of self-preservation may dictate it. Thus, Congress in 1798 denounced the Treaty of Alliance with France, and in 1888 legislation was enacted in conflict with our treaty with China as to immigration. But these were extreme cases; and they certainly did not establish that all our treaties were mere options so far as Congress is concerned. In the case of the French treaty, France herself had violated its terms and spirit and waged war upon us; in the case of the Chinese treaty we were menaced with invasion by hundreds of thousands of Asiatic laborers, and the Chinese Government had declined to abrogate an objectionable and oppressive treaty obligation. The Chinese Exclusion Act was, nevertheless, a violation of our treaty, and China under settled principles of international law could have treated the legislation as a cause for war, or, if the League Covenant had then been operative and we were a party thereto, China could have compelled us to arbitrate the issue, because it would have involved a dispute "as to the interpretation of a treaty" and it would have been "likely to lead to a rupture," and the League could then have taken against us "any action that may be deemed wise and effectual to safeguard the peace of nations." And if we refused to obey the award, there would then be war with all the other members of the League, as will be noted below in discussing some aspects of the League Covenant. The same would be true to-day, if the United States were a member

of the League and if Japan insisted that the interpretation of her treaty with us should be arbitrated, or, if not arbitrated, submitted to the Council or Assembly of the League for its consideration and decision!

In both of the instances above mentioned, that is, in 1798 and again in 1888, the United States was in honor justified in the course which Congress took, because changed conditions and the public welfare and safety imperatively demanded such action and warranted the termination of the treaty obligations; but they do not furnish precedents upholding the doctrine of President Wilson and Governor Cox that Congress is "absolutely free" to perform any treaty as it may arbitrarily elect, without violating the plighted faith of the Nation.

It will be recalled that at the famous colloquy between the President and the Foreign Relations Committee of the Senate, on August 19th, 1919, the President read a prepared written statement, which was furnished to the press, running in part as follows.

The United States will, indeed, undertake under Article 10 to "respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League," and that engagement constitutes a very grave and solemn moral obligation. But it is a moral, not a legal, obligation, and leaves our Congress absolutely free to put its own interpretation upon it in all cases that call for action. It is binding in conscience only, not in law.

Article 10 seems to me to constitute the very

backbone of the whole Covenant. Without it the League would be hardly more than an influential debating society

Thereupon questions were put by the Senators, and these questions and the answers thereto ought to be read by every voter. A few extracts may suffice to show the point of view of the President as to our treaty obligations:

*Senator Knox* — Mr President, allow me to ask this question. Suppose that it is perfectly obvious and accepted that there is an external aggression against some Power, and suppose it is perfectly obvious and accepted that it cannot be repelled except by force of arms. Would we be under any legal obligation to participate?

*The President* — No sir; but we would be under an *absolutely compelling moral obligation*.

*Senator Knox* — But no legal obligation?

*The President* — Not as I contemplate it.

*Senator Harding* — Right there, Mr President, if there is nothing more than a moral obligation on the part of any member of the League, what avail Articles X and XI?

*The President* — Why, Senator, it is surprising that that question should be asked. *If we undertake an obligation we are bound in the most solemn way to carry it out*

*Senator Harding* — If you believe there is nothing more to this than a moral obligation, any nation will assume a moral obligation on its own account. Is it a moral obligation? The point I am trying to get at is, suppose something arises affecting the peace of the world, and the Council takes steps as provided here to conserve or preserve, and announces its decision, and every nation in the League takes advantage of the construction that you place upon these articles and says. "Well,

this is only a moral obligation and we assume that the nation involved does not deserve our participation or protection," the whole thing amounts to nothing but an expression of the League Council

*The President — There is a national good conscience in such a matter.* I should think that was one of the most serious things that could possibly happen. My understanding — when I speak of a legal obligation, I mean one that specifically binds you to do a particular thing under certain sanctions. That is a legal obligation. *Now a moral obligation is of course superior to a legal obligation, and, if I may say so, has a greater binding force.* Only there always remains in the moral obligation the right to exercise one's judgment as to whether it is, indeed, incumbent upon one in those circumstances to do that thing. In every moral obligation there is an element of judgment, in a legal obligation there is no element of judgment.

The issue between the two political parties could not be more clearly brought before the American public than by reference to this colloquy and the astounding answers then made by President Wilson. It is, indeed, amazing to realize that this is the reasoning of a President of the United States, who solemnly asserts that "a moral obligation is of course superior to a legal obligation, and, if I may say so, has a greater binding force," and yet insists that "an absolutely compelling moral obligation," as under Article 10, "leaves our Congress absolutely free to put its own interpretation upon it in all cases that call for action."

With this humiliating and wretched sophistry that Congress could keep us out of war by refusing to perform the treaty obligation of the Nation,

compare Senator Harding's virile and patriotic declaration of August 28th, viz..

Technically, of course [Congress] could do so. Morally, with equal certainty, it could not do so, nor would it ever do so. The American people would never permit a repudiation of a debt of honor. No Congress would ever dare make this nation appear as a welcher, as it would appear and would be in such an event before the eyes of the world.

The *power* of Congress as distinguished from its *right* to violate treaties made by the United States is, of course, indisputable, and has been sustained by the courts even when involving a breach of international treaty faith, but that was because an otherwise constitutional statute enacted subsequent to a treaty is always binding upon the courts, and the point whether or not it involves a violation of a treaty is not a judicial question. A court could not properly hold an act of Congress invalid simply because it violated a pre-existing treaty. It could not set up its judgment of our treaty obligations as against the judgment and action of Congress. This results not only from the essential nature of the legislative and judicial powers of the Nation, but from the express constitutional provision making an act of Congress as well as a treaty the supreme law of the land, and from the rule that a subsequent act of Congress will control a prior treaty to the contrary effect just as a subsequent treaty will similarly control a prior act of Congress.

Ex-Senator Sutherland of Utah in a series of exceptionally able and learned lectures delivered in



1919 at Columbia University and entitled "Constitutional Power and World Affairs," reviewed the question of the power of Congress to violate our treaty obligations, and concluded as follows:

The power of Congress to abrogate a treaty or to refuse to enact legislation necessary to effectuate a treaty or to repeal or alter such legislation after its enactment, should be exercised only for the clearest and most compelling reasons — reasons which will rarely exist outside the justifying principles of international law. Mere hardship, however severe, the presence in the treaty of unwise stipulations, even to the point of folly, will never justify its exercise, for these are considerations which, it must be conclusively assumed, were weighed by the makers of the treaty by whose determination we become irrevocably bound. Nations like individuals must stand by their bargains, whether they turn out to be profitable and wise, or burdensome and foolish. In no other way and upon no other principle can international intercourse be decently maintained. The very fact that the affirmative action of Congress in these respects cannot be judicially or otherwise authoritatively reviewed and set aside, if wrong — nor the failure of Congress to act, when failure is inexcusable, become the basis of coercive measures — emphasizes the necessity for the most exact observance of the obligations which the duly constituted treaty-making agencies of the government have assumed. The word of honor of a nation, like the word of honor of a man, once given, passes into the realm of undebatable things. That a treaty is only "a scrap of paper" is a doctrine so depraved that any nation which gives it sanction deserves to be held for all time in the just scorn of all faith-keeping peoples

The sound common sense and intellectual honesty of the American people and their respect for the honor of the Nation must lead them to perceive that the contention of President Wilson and Governor Cox leads inevitably to the conclusion that no treaty ever made by the President with the advice and consent of the Senate was or is either *legally* or *morally* binding upon the Congress of the United States, and that Congress is at entire liberty to refrain from fulfilling the obligations of a treaty if at the time being, when performance is called for, it sees fit in its judgment to decline to perform. The adoption of such a rule of national conduct would inevitably subject the United States to the disgrace which has sullied the name of ancient Carthage for more than two thousand years, and which in our day earned for the German Empire the contempt of the whole civilized world when she cynically, shamelessly and brutally declared that a treaty with her was merely "a scrap of paper." The American electorate will not now vote to class American faith with that of Carthage, Germany and Soviet Russia, and will not accept the sophistical doctrine that in respect of Article 10 our Congress would be "absolutely free to put its own interpretation upon it in all cases that call for action," and be free to refuse to fulfill and perform such a clear and unambiguous treaty obligation as this covenant of the League would impose upon the United States. Nor will they endorse as an acceptable standard of American treaty morality the suggestion of President Wilson that the United

States could safely ratify the League Covenant because, by having its representative refuse to agree to any steps proposed, it would have the power to prevent unanimity in the Council and therefore any action by the League whenever it saw fit, no matter how meritorious and urgent the particular case might be. Let President Wilson's own language state his standard of treaty morality. At Kansas City, on September 26th, 1919, he is reported in the press as saying:

Whether we use it wisely or unwisely, we can use the vote of the United States to make impossible the drawing of the United States into any enterprise that she does not care to be drawn into.

### THE MONROE DOCTRINE

The Monroe Doctrine is so firmly established as embodying a sound and wise governmental principle and a settled and distinctive foreign policy of the United States that no one openly advocates its impairment or abandonment. The essence of the doctrine is that the United States regards it as essential to its peace and safety that no European or Asiatic nation shall be permitted to interfere or intermeddle in matters affecting the territorial integrity or the political independence of American nations, nor to establish colonies or acquire territory in the Western Hemisphere. The doctrine is exclusively our own, and it rests, as Senator Root has pointed out, wholly upon the right of self-protection, and "is and always has been that the safety of the United States demands that American territory shall remain American"

under any and all contingencies. And Senator Root added, "since the Monroe Doctrine is a declaration based upon this nation's right of self-preservation, it cannot be transmuted into a joint or common declaration by American states or any number of them." *A fortiori*, the doctrine cannot be transmuted into a common declaration in which European and Asiatic states shall unite without subverting its spirit and purpose and depriving the United States of independence and freedom of action thereunder and of the power of determining exclusively for itself when and how it should enforce the national policy the doctrine embodies.

President Wilson proclaims that Article 10 of the League Covenant "extends the Monroe Doctrine to the whole world," and Governor Cox, "in complete accord," unqualifiedly endorses this claim and declares in his speech of acceptance that "the Monroe Doctrine is the very essence of Article 10 of the Versailles Covenant." If these propositions be analyzed, it will be readily perceived how great a departure the obligation assumed in and by Article 10 would be from any reasonable or justifiable interpretation of the Monroe Doctrine and how radically that article would subvert and nullify the essence of the doctrine as we have heretofore understood it.

Article 10 in the original form prepared and proposed by President Wilson read substantially as follows:

The Contracting Powers unite in guaranteeing to each other political independence and territorial integrity. . . .

The President submitted this form to his expert legal advisers at Paris, and the following was the written opinion they furnished him, as the records of the Senate show:

But aside from any questions of several, joint, or collective guaranties and their proper language, the question of policy presented by this Article in its first sentence is whether the United States should favor a guaranty of independence and integrity of every State by every other State.

Such an agreement would destroy the Monroe Doctrine. Under such an agreement Germany, as well as the United States and even despite the United States, would have been bound to support Venezuela against Great Britain in 1895. Under such an agreement, Great Britain, France and Japan might be bound to intervene in Chile or in Peru according to their views of the Tacna-Arica dispute either (sic) in addition to intervention by the United States

Indeed any guaranty of independence and integrity means war by the guarantor if a breach of the independence or integrity of the guaranteed State is attempted and persisted in.

What the United States has done, is doing and will do for Europe, is enough, without making an unasked sacrifice of her interests and those of Latin America, by giving up a policy which has prevented the countries south of the Rio Grande from being like Africa, pawns in the diplomacy of Europe. . . .

But the general policy of guaranty against the acts of other States looks toward intervention and war by one or more of the guarantors and is in accord only with the spirit of the old diplomacy . . .

It is not doubted that by treaty the United

States could agree to *declare* war under certain circumstances. If the circumstances arose, the failure of Congress to declare war would be a breach of the treaty, provisions of such nature are frequently found in treaties of alliance, which are within the treaty-making clause of the Constitution.

The language of the proposed guaranty was thereupon changed, but under the substituted wording contained in Article 10, notwithstanding the above warning from the President's expert advisers, the definite and absolute obligation to *guarantee* remained. Mr. Léon Bourgeois, president of the special commission that drafted the League Covenant, on February 14th, 1919, speaking at Versailles of the amended article, declared to the whole world in the presence of President Wilson, as noted below, that the modified language was intended to express a "definite guaranty to respect and preserve the territorial integrity and political independence of all the other members of the League "

Immediately upon the publication in February, 1919, of the draft of the Constitution of the League of Nations as it was then called, protests were made in the Senate, in the press throughout the country, and by such distinguished publicists as Senator Root, Judge Hughes and Ex-Ambassador Hill, to the effect that the proposed plan would impair, if not destroy, the Monroe Doctrine, and that it was imperative that the doctrine should be safeguarded and withdrawn from the competence and jurisdiction of the League. When the Versailles Treaty of Peace with Germany came

before the Senate in its final and definite form in July, 1919, it was found to be in French as well as in English, and that it dealt with the Monroe Doctrine as follows.

## ARTICLE 21.

Les engagements internationaux, tels que les traités d'arbitrage, et les ententes régionales, comme la doctrine de Monroe, qui assurent le maintien de la paix, ne sont considérés comme incompatibles avec aucune des dispositions du présent pacte.

## ARTICLE 21

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace.

The Versailles Treaty expressly provides that "the French and English texts are both authentic," and the two texts will, therefore, always have to be consulted, and one must be regarded as just as operative and binding as the other. To a student familiar with both languages, it is surprising to perceive that the two texts differ in meaning in many places throughout the whole treaty; and these differences are likely hereafter to cause serious misunderstanding and embarrassment. Thus, the two texts of Article 21 have widely different meanings. The English text provides that the validity of the Monroe Doctrine shall be unaffected by the League Covenant, whilst the French version merely declares that the Monroe Doctrine is not to be considered as incompatible with any of the provisions of the League Covenant.

According to the French text, the Monroe Doctrine would not be exempted from the operation of the League Covenant but would become subject to its provisions to the same extent as all treaties or understandings among nations. If a dispute arose between the United States and another member of the League as to the Monroe Doctrine and our action thereunder, the latter government could under the French text justly insist that the matter was within the competence and jurisdiction of the League and determinable by the Council or Assembly as therein expressly provided. How this difference between the French and English texts arose, whether due to ignorance, incompetency, or design, is now quite beside the question, for we must deal with the texts as they are, and they are not the same in tenor and purport.

President Wilson has repeatedly stated what his individual understanding or his confident assumption was of particular terms used in the Versailles Treaty, and what he conceives or assumes the other members of the Peace Conference also understood. But no point is better settled or could be clearer than that the language of a treaty must control, and not the understandings of its negotiators which were not expressed in the language actually used. In the present case, the rule would apply with exceptional reason and force, for it could be recalled that the President did not speak French, that many of the negotiators did not speak English, that intercourse depended in great, if not greatest, measure upon interpreters, and that the duty was, therefore, especially incumbent



upon our representatives of seeing to it that the utmost care was taken accurately to express in both languages any provisions purporting to preserve unimpaired and to safeguard American interests, particularly such a vital and distinctive American policy as the Monroe Doctrine.

Aside, however, from the difference between the two texts of Article 21, and confining our consideration to the English version, it should be pointed out that this article characterizes and defines the Monroe Doctrine as an international or regional understanding or agreement (in French *entente*), when as a matter of fact and plain common sense, the doctrine is neither one nor the other. It is wholly unilateral and exclusive, and it involves no element of understanding or agreement with any other country. The United States could permit aggression upon Mexico, Venezuela, Brazil, Chile, Peru, etc., by any European or Asiatic power without in the slightest degree violating any understanding or agreement now existing between it and any of these American republics.

The Monroe Doctrine deals solely with the interests and protection of the United States, and it involves no definite guaranty on our part to any other American nation. We have always retained thereunder entire liberty to consider only our own interests, protection and policies. A war between Central or South American republics, with incidents of aggression, conquest, subjection and changes in national territory, would not come within the scope of the doctrine, as it has ever

been heretofore authoritatively interpreted. Stated in other language, under the Monroc Doctrine the United States does not undertake to guarantee the territorial integrity or political independence of any other American republic as is provided in Article 10 of the League Covenant, or to guarantee any such nation against aggression or punishment, and during the past hundred years there have been many instances in Central and South America where territorial integrity and political independence have been menaced and affected by external aggression of American republics without the slightest idea on anybody's part that the Monroe Doctrine was involved or was being violated

On January 6th, 1916, President Wilson in addressing the Pan-American Scientific Congress assembled at Washington declared that —

The Monroe Doctrine was proclaimed by the United States on her own authority. It has always been maintained, *and always will be maintained upon her own responsibility.*

Yet, it is now proposed to abandon this century-old national policy, and to transfer the responsibility of maintaining the Monroe Doctrine to a body representing foreign nations, which may, perhaps, be indifferent to our welfare and act as expediency shall dictate to protect European or Asiatic interests.

Although, to repeat, the Monroe Doctrine involves no undertaking or guaranty whatever on the part of the United States that it will respect or preserve the territorial integrity or political independence of any country, Article 10 of the League Covenant would compel us "to respect

and preserve the territorial integrity and existing political independence of all members of the League" whether in Europe, Africa, Asia, or America, including every Central or South American republic a party thereto. Fifteen of these American republics are already members of the League. We waged war upon Mexico in 1846 and dismembered her territory without any one conceiving that we were violating the Monroe Doctrine, and we similarly waged war upon Spain in 1898, liberated Cuba and annexed Porto Rico and the Philippine Islands. It would have impressed all intelligent observers as little short of preposterous to claim that the Monroe Doctrine in the case of either war compelled us "to respect and preserve the territorial integrity" of Mexico or Spain. But, in either instance, had the League Covenant been in operation and Mexico or Spain had been members, Article 10 would have tied our hands and paralyzed our action.

Under the Monroe Doctrine, we would not tolerate the intermeddling and participation of European and Asiatic nations in American affairs. Under Article 10 such intermeddling and participation would be made mandatory, and a permanent obligation would be imposed upon foreign countries so to intermeddle as plainly as the French and English languages can express that right and duty.

The Monroe Doctrine was the enunciation of a general policy of the United States which it would follow or not in any particular instance as it might at the time being conceive that its protection, interest, or conscience dictated, in other words,

expediency might wholly control its action without violating any obligation to other American states. But Article 10 would create a definite guaranty of protection, would leave no discretion, and would impose a positive and absolute obligation to act whenever the situation provided for arose, that is, of external aggression from a European, Asiatic, or American state, and that, too, without regard to the merits of the particular incident or controversy, or to our national interests or policies at the time being. However intolerable to us conditions might become in any Central or South American republic, if it were a member of the League, we would be compelled to refrain from any act that would impair by external aggression its territorial integrity or existing political independence. Even Haiti and Panama could defy us, for Haiti and Panama are members of the League!

Although President Wilson and Governor Cox represent that Article 10 is the heart of the whole League Covenant, that it is the very essence of the Monroe Doctrine, and that it extends that doctrine to the whole world, Article 21 provides that "nothing in this Covenant shall be deemed to affect the validity of . . . the Monroe Doctrine." The language of this article, it is submitted, would ordinarily mean and imply no more than that the Monroe Doctrine was to be recognized as valid, but that its application or enforcement was not withdrawn from the competence or jurisdiction of the League. It certainly does not purport to exclude such jurisdiction. That it would be within the competence or jurisdiction

of the League follows clearly from the French text and impliedly from the English text as well as from the contention of President Wilson and Governor Cox that Article 10 extends the doctrine to the whole world, thus transferring to Europe and Asia what we have for a hundred years been proclaiming to be our individual and distinctive policy and exclusive concern, to be dictated and controlled solely by considerations of our own interests and safety. If Article 10 extends the Monroe Doctrine to the whole world, it then transfers from the United States to the League the determination of all questions arising thereunder, in which, moreover, the United States would have no voice because necessarily a party to any controversy that might arise as to the application of that doctrine!

The United States, without violating the Monroe Doctrine, could permit external aggression by one Central or South American republic upon another, and has constantly done so, but under Article 10 it would be obligated to prevent such aggression. In fact, as heretofore understood, the Monroe Doctrine, again to repeat, would not apply at all to a war between two Central or South American republics. The United States would only be called upon to interfere in such a controversy whenever or because its national interests might be prejudiced or its national safety menaced, and not because it owed the American state that was being attacked any obligation or duty whatever to protect it as against external aggression, or to preserve its territorial integrity or political independence.

Whilst Article 21 provides that the League Covenant shall not *affect the validity* of the Monroe Doctrine, Article 10 nevertheless transfers its enforcement to the League, so as to make it hereafter a matter of world concern and so as to provide for interference and participation by the League in its enforcement if the United States becomes a member. Stated in other words, the League Covenant, whilst affirming the validity of the Monroe Doctrine, would compel us to arbitrate or submit to the Council or Assembly of the League any question that might arise between us and a foreign country in regard to the application of that doctrine, and all members of the League could participate in and intermeddle with its enforcement.

President Wilson at the time of his colloquy with the members of the Senate Foreign Relations Committee on August 19th, 1919, declared as follows:

The Monroe Doctrine is expressly mentioned as an understanding which is in no way to be impaired or interfered with by anything contained in the Covenant, and the expression, "regional understandings like the Monroe Doctrine," was used, not because any one of the conferees thought there was any comparable agreement anywhere else in existence or in contemplation, but only because it was thought best to avoid the appearance of dealing in such a document with the policy of a single nation. Absolutely nothing is concealed in the phrase.

It will be noted in the first place that the wording of Article 21 does not provide that the Monroe Doctrine "is in no way to be impaired or interfered

with", it simply provides that its *validity* shall not be affected, and it leaves all the provisions and remedies of the League Covenant applicable to the settlement or decision of any question that may arise under the doctrine. In the second place, if the League Covenant is in no way to interfere with the Monroe Doctrine, then why do President Wilson and Governor Cox insist that Article 10 extends the Monroe Doctrine to the whole world? How can it be consistently argued that the doctrine is in no way interfered with by anything contained in the League Covenant when it is extended to the whole world and jurisdiction transferred from the United States to the League for its enforcement? Certainly, its extension to the whole world would interfere with its operation and impair its integrity so far as liberty and independence of action by the United States are concerned.

If President Wilson understood that the Monroe Doctrine was to be excluded from the competence or jurisdiction of the League, then why did not Article 21 so provide as suggested by Senator Root and Judge Hughes, and why did he object to the fifth Lodge reservation? Why did he insist that this reservation nullified the League Covenant? And why was he not willing to accept a definite and express protection of American interests which would exclude the possibility of doubt and misunderstanding hereafter? This reservation, following sound precedents heretofore accepted by foreign nations, such as in the case of the Hague Conferences of 1899 and 1907, reads as follows:

5 The United States will not submit to arbitration or to inquiry by the assembly or by the council of the League of Nations, provided for in said treaty of peace, any questions which in the judgment of the United States depend upon or relate to its long-established policy, commonly known as the Monroe Doctrine, said doctrine is to be interpreted by the United States alone and is hereby declared to be wholly outside the jurisdiction of said League of Nations and entirely unaffected by any provision contained in the said treaty of peace with Germany.

If this reservation truly expressed the intent of the language used in Article 21, should it not in reason and common sense have been acceptable to the President? But it was clearly because it *nullified* his intent, that he objected to it!

It should be obvious that unless this fifth reservation were adopted, the essence of the Monroe Doctrine would be subverted by the provisions of the League Covenant, and that the protection of our national interests under the principles of that doctrine would then be transmuted from a matter exclusively within our control and discretion into a matter of world concern and intermeddling within the competence and jurisdiction of the League. Let us suppose, for example, that after the United States had become a member of the League without this reservation, a controversy again arose between the United States and Great Britain in regard to the territorial integrity of Venezuela, as in 1895, and that England insisted that the matter was within the competence and jurisdiction of the League. The result would then be deter-



minable by the League Council or Assembly composed wholly of the representatives of foreign nations, Great Britain and the United States as parties to the controversy being excluded. Or, again, suppose that a controversy arose between the United States and Japan as to establishing a Japanese colony in Southern California, or elsewhere in Mexico, and that Japan insisted that that controversy was determinable by the League, and that President Wilson and Governor Cox had declared that the Monroe Doctrine had been extended to the whole world in and by Article 10. Would not foreign countries be then determining for us whether we should or should not be compelled to permit Japanese colonizing at our very doors?

The United States should never thus abandon exclusive control of its freedom of action under the Monroe Doctrine and should never agree even to arbitrate questions properly arising thereunder. Such has been its fixed policy in the past, and such should be its consistent policy in the future. The above reservation should, therefore, have been acceptable to the President because essential to the security and welfare of the United States.

## II

### INTERPRETATION OF THE COVENANT OF THE LEAGUE

An analysis of the Covenant of the League of Nations should convince any candid student that it contemplates armed force and is instinct with the obligation and duty to resort to war whenever

necessary to enforce its provisions. It is futile to pretend that this is not its necessary effect. President Wilson at Versailles on February 14th, 1919, when first submitting the draft plan to the Peace Conference, declared that —

Armed force is in the background in this programme, but it is in the background, and if the moral force of the world will not suffice, the physical force of the world shall.

The President's legal advisers at Paris, as we have already seen, had previously admonished him in respect of Article 10 that "any guaranty of independence and integrity means war by the guarantor if a breach of the independence or integrity of the guaranteed State is attempted and persisted in." Article 16 expressly provides that if any member of the League resorts to war in disregard of its covenants under Articles 12, 13 and 15, *no matter what the merits of the controversy may be*, "it shall *ipso facto* be deemed to have committed an act of war against all other members of the League, which hereby *undertake* immediately to subject it to the *severance* of all trade or financial relations, the *prohibition* of all intercourse between their nationals and the nationals of the covenant-breaking State, and the *prevention* of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a member of the League or not." The absolute undertaking thus to *prevent* (in the French text "*faire cesser*"), of course, implies the use of armed force if necessary. Article 16 further provides —

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

### ARTICLE 10

The texts of Article 10 in French and English are printed below in parallel columns for convenience of comparison, viz..

#### ARTICLE 10.

Les Membres de la Société s'engagent à respecter et à maintenir contre toute agression extérieure l'intégrité territoriale et l'indépendance politique présente de tous les Membres de la Société. En cas d'agression, de menace ou de danger d'agression, le Conseil avise aux moyens d'assurer l'exécution de cette obligation.

#### ARTICLE 10.

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled.

It must be clear that no language could have been employed, whether in French or in English, which would have more definitely provided for an absolute obligation on the part of each member of the League not only itself to respect but in addition to "preserve as against external aggression the territorial integrity and existing political independence of all Members of the League" in every part of the world.

At the session of February 14th, 1919, above mentioned, the proposed plan of a League of Nations was explained in detail by Mr Bourgeois, who is a very able and distinguished French jurist and who, as we have seen, presided over the special commission to which the drafting of the plan had been confided. Among other things, he authoritatively announced in the presence of and without dissent from President Wilson as follows:

All the States, in consenting to submit to international justice, take at the same time a definite pledge to guarantee to each other the integrity of their territories as established by the settlement of the present treaty, and also 'to guarantee their political independence against future aggression. This is the object of our scheme. I hope the means which are suggested by it will allow us to attain our object . . .

. . . If one State (it may be the smallest and most remote of all the States) is attacked without justification, then the whole of the League of Nations is being attacked, and will resist. . .

Here is a second point. Take a State that violates the international covenant. That State is supposed to be in a state of war against all the members of the League, and all are prepared to compel it to execute its obligations.

That President Wilson then so understood cannot be doubted, for in answer to Senator Knox, in the colloquy above referred to, he declared, that in case of external aggression which, it was perfectly obvious, "could not be repelled except by force of arms," the United States "would be under an absolutely compelling moral obligation" to participate. It should furthermore be distinctly borne

in mind that this *absolutely compelling moral obligation to participate by force of arms* would arise under the plain terms of Articles 10, 12, 13, 15 and 16 wholly irrespective of the merits of any pending controversy, that the qualification as to being attacked "without justification" is not contained in the covenants, and that no discretion or option whatever was reserved to any member except, of course, the alternative of deliberately violating an express treaty obligation and outlawing itself. Thus, under Article 10, the United States would be obligated to "preserve as against external aggression the territorial integrity and existing political independence of all ~~the~~ Members of the League" wholly irrespective of the merits of the controversy, which in the particular case might justly necessitate or justify external aggression.

When the draftsmen of the League intended to qualify any such obligation "as against external aggression," they expressly so provided by employing appropriate terms. On the same day that the League Covenant was signed, that is, on June 28th, 1919, President Wilson and Mr Lansing on behalf of the United States executed an annex to the Versailles Treaty, which among other things provided that, as certain provisions of the treaty —

may not at first provide adequate security and protection to France, the United States of America shall be bound to come immediately to her assistance in the event of any *unprovoked movement of aggression* against her being made by Germany.

This language plainly involved no obligation to

go immediately to the assistance of France unless the aggression was "unprovoked"; but Article 10 is not so qualified or limited, and the event of external aggression, whether *provoked or unprovoked*, brings the obligation into full operation. Hence, the contention of Poland that even if she did provoke the recent aggressions by Russia and Lithuania, which she denies, she was nevertheless entitled to the protection of all the members of the League, which she did not get!

In interpreting Article 10, the question, of course, is not only what we in the United States should understand its obligation to be, but what the other members of the League are fairly and justly entitled to understand it to mean and import. We must bear in mind that it embodies a treaty obligation which was first proposed by our own President, unasked by the other members of the Peace Conference, that it was "forced" upon them by him, that he considered it essential and the very heart and backbone of the whole Covenant, and that he insisted that the second Lodge reservation dealing with it would nullify its intended effect. This aspect may be emphasized by recalling some indisputable facts.

The Senate investigation disclosed that it was President Wilson who first proposed the assumption by the members of the League of the obligation contained in Article 10 and that his expert legal advisers, in the opinion above quoted criticizing the guaranty in connection with the Monroe Doctrine, candidly stated that the proposition would be "*an unasked sacrifice*" of the interests of the

United States Secretary of War Baker in his recent speech at Columbus declared that:

Our President formulated it and forced its acceptance.

Notwithstanding the concession by President Wilson that the first sentence of Article 10 creates "an absolutely compelling moral obligation" to keep our plighted faith and resort "to force of arms," he now asserts substantially that as the second sentence provides that "the Council shall advise upon the means by which this obligation shall be fulfilled," no obligation would arise under the first sentence until the receipt of such advice, and that the United States would then be "absolutely free to put its own interpretation upon it in all cases that call for action," and hence could comply or not with such advice as the Congress might determine, and that it would be at liberty to do nothing whatever no matter how clear and absolutely compelling the moral obligation might be. Stated in other words, if France or Belgium or Italy or Poland were subjected by Germany or Russia to unprovoked external aggression and wanton attack and our representative on the League felt constrained to concur in advising as necessary that American troops should be immediately sent, Congress would be at liberty arbitrarily to decline performance and could treat the advice as a mere suggestion or recommendation to be adopted or not as it saw fit!

It is believed that the framers of the League Covenant did not intend that compliance with the Council's unanimous advice "upon the means by

which this obligation shall be fulfilled" should be merely optional or discretionary. The use of the English verb "advise" in Article 10 was undoubtedly in the sense of *to notify, to give notice, to make known, or to bring into view*, just as a merchant or banker is currently said to be obligated to advise the drawee of the drawing of a draft or bill of exchange, or a party to a contract is called upon to advise the other party of the happening of some contingency therein provided for. But even if the meaning of the English verb "advise," as used in this important treaty, could reasonably be said to be doubtful or ambiguous, the French text is hardly susceptible of any such view. The French wording is that "*le Conseil avise aux moyens d'assurer l'exécution de cette obligation.*" This means that the Council shall *give notice*, or *notify* as to the means, or *make known* the means, or *ascertain* the means. The French verb *aviser*, as used in Article 10 of the Versailles Treaty, does not mean that the Council shall merely propose or recommend, but that it *shall give notice* or *make known* or *ascertain* what the necessary means are. Any member of the League would fairly and justly be entitled to insist that the French text was as authentic as the English text, and would be able to point out that the parties to the treaty must have fully appreciated and contemplated a substantial difference between *advise* on the one hand and *propose* or *recommend* on the other hand. Article 13, for example, could be cited, where the wording is that "the Council shall *propose* what steps should be taken to give effect" to an award,



and Article 16, where the Council is "to *recommend* to the several Governments concerned." In the corresponding French texts the verbs are *proposer* and *recommander*. Certainly, if in Article 10 it had been intended that the Council should merely have power to *propose* or *recommend*, the expert draftsmen of this exceptionally important treaty would have expressed that intent by using the words "propose" and "recommend," as they did in the other provisions of the treaty.

Assuming, however, that so far as the United States is concerned, the English version of Article 10 controls, would it be reasonable and fair to hold that the words "the Council *shall* advise upon the means by which *this obligation shall be fulfilled*," absolve each member of the League from all obligation and leave each member at liberty to disregard such advice and act independently according to its own judgment? Could it fairly and honestly be asserted that under Article 10 each member of the League was to be free to do only what it thought appropriate and nothing at all unless it saw fit, without inviting the reproach and disgrace of breaking its plighted faith and rendering its treaty obligations of no value? Is it credible that it was intended that Article 10 should require unanimity among all the members of the Council before any duty or obligation whatever arose, and that the refusal or failure of any one member of the Council should release the others and absolve them from all obligation to perform? Under President Wilson's interpretation of Article 10, not even a moral obligation was

created to preserve or maintain Poland or to defend Belgium or France or any other country if menaced with an unprovoked movement of aggression and devastation, and the refusal of any one member of the present Council (*e. g.*, of the representative of even Spain or Greece or Brazil) to concur in any proposed advice of the Council would defeat and paralyze all action by the whole League!

The President's idea seems to be that as unanimity is required in the functioning of the Council, we can, as a great nation, proud of its prestige and honor, escape all obligation under Article 10 by instructing our representative on the Council to refuse to concur in any advice "upon the means," however obviously warranted and indisputably necessary! As a matter of fact, if no obligation arose under Article 10 unless the Council advised, then this provision as to unanimity in the Council was a snare and was inserted for the purpose of enabling any member wholly to defeat all obligation to preserve other members as against external aggression, and it would readily shatter all reasonable possibility of coöperative action under the League. Let it be borne in mind that if this be the true meaning of Article 10, the power to paralyze cooperation or action under the League would be vested in Spain, or Greece, or Brazil, no matter what our conviction or conscience might dictate or the conviction and conscience of France or England or Belgium or Italy or Japan. Would not such an optional treaty obligation be a mere rope of sand, and

could any nation ever rely upon it for protection? And would not then the second sentence of Article 10 practically operate to vitiate the first?

But if it be true that Article 10 and the other covenants of the League would not require the United States to resort to force of arms in order to fulfill the obligations they create unless Congress saw fit to declare war in its discretion, then why does President Wilson object to a reservation expressing this interpretation, and why does he declare that such a reservation would *nullify* the whole League Covenant? Obviously, a reservation which expresses what is *implied* and what it is claimed was fully understood by all parties to the League Covenant could not possibly *nullify* the article. It is, of course, only because the second Lodge reservation does in the President's mind actually tend to exclude or eliminate, that is, to nullify, what otherwise would be an absolute treaty obligation to declare and wage war, that he refused to accept it. The wording of this proposed reservation should be recalled, viz.:

2. The United States assumes no obligation to preserve the territorial integrity or political independence of any other country by the employment of its military or naval forces, its resources, or any form of economic discrimination, or to interfere in any way in controversies between nations, including all controversies relating to territorial integrity or political independence, whether members of the League or not, under the provisions of Article 10, or to employ the military or naval forces of the United States, under any article of the treaty for any purpose, unless in any particular case the Congress, which, under the Constitution, has the sole

power to declare war or authorize the employment of the military or naval forces of the United States, shall, in the exercise of full liberty of action, by act or joint resolution so provide.

It should reasonably seem to follow that there can be no escape from the conclusion that, if this proposed reservation would *nullify* or *impair the integrity* of the League Covenant, it is because the League Covenant, as it now stands, creates an obligation to declare war, which would be binding upon Congress and which it would have to perform unless willing to violate the treaty faith of the Nation. Every American voter should meditate long and anxiously over this proposed reservation, and candidly ask himself or herself to determine whether the Senate was or was not committing a "crime" or "dishonoring and disgracing the Nation," as is now being charged by the Democratic candidates, when it resolved that this reservation was imperatively necessary to preserve our independence and freedom of action in respect of one of the most important and dangerous of all the obligations which would be imposed upon the United States by the League Covenant.

It seems, furthermore, necessarily to follow that Senator Root and Judge Hughes were plainly right when in ample time, that is, in March, 1919, they publicly urged upon President Wilson and the Peace Conference that Article 10 should be wholly eliminated. This position should be now taken by the Senate in view of the practical and illuminating developments since the Versailles Treaty became effective as to the other signatories.

Even with the Lodge reservation, Article 10 would create an obligation which we could not disregard arbitrarily. The only safe and prudent course would be to delete the whole article, which should never have been forced upon the Peace Conference by our President and which should never be acceptable to us in any treaty.

Americans will not fail to reflect upon the fact that the populations now ruled over as subject peoples by England and France constitute more than one-fourth of the inhabitants of the world, that Article 10 guarantees the perpetuation of this condition unless the countries in subjection can throw off the foreign control and domination without outside assistance, and that we could not under that article assist any of them, whatever might be the merits of their claims to independence and self-government, and irrespective even of oppression and cruelty by their rulers. Had the League Covenant been in force in 1778, France could not have come to our aid in the War of Independence. Likewise, had the League been in force, we could not have aided Texas as against Mexico, we could not have aided Cuba as against Spain, Russia could not have aided the Balkan States to throw off the yoke of Turkey; France could not have aided Italy to win the freedom of Northern Italy from Austria, etc., etc. Article 10 would in practical effect perpetuate the existing control of the great powers without regard to any principle of self-determination or the consent of the governed, and prevent any outside help to the oppressed struggling for liberty against intolerable conditions.

## ARTICLES 12, 13 AND 15

There can be no doubt that Articles 12, 13 and 15 go beyond any treaty of arbitration that has ever been entered into by the United States. Not only is the description of disputes which "are declared to be among those which are generally suitable for submission to arbitration" most comprehensive, but every "dispute likely to lead to a rupture" is agreed to be submitted either to arbitration, or to inquiry by the Council or ultimately by the Assembly. The report of the Council is to be binding if "unanimously agreed to by the members thereof other than the representatives of one or more of the parties to the dispute." If the dispute finally goes to the Assembly, its decision is to be equally binding "if concurred in by the representatives of those members of the League represented on the Council and of a majority of the other members of the League, exclusive in each case of the representatives of the parties to the dispute." Thus, if we desire a test from the point of view of the United States, we may take the case of our pending dispute with Japan. This would clearly be a "dispute likely to lead to a rupture" and, moreover, a dispute "as to the interpretation of a treaty," and would have to be submitted to arbitration or to the Council or Assembly, and these latter bodies would have the power to decide, first, that the dispute did not involve "a matter which by international law is solely within the domestic jurisdiction of" the United States, and secondly, that the United States was at fault on the merits.

## ARTICLES 16 AND 17

Articles 16 and 17 would involve obligations as far-reaching and dangerous as Article 10, and these obligations are not sufficiently or adequately safeguarded by the Lodge reservations.

It is sometimes asserted that Article 16 provides only for an economic boycott, and that it does not authorize a resort to war. It need, however, only be read to see that it expressly contemplates war and the use of force. Thus, it provides that "should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League," and that "it shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League." Even the provision for a so-called economic boycott or blockade provides for force of arms. All the members of the League undertake, as shown above, immediately to subject the covenant-breaking member "to the *severance* of all trade and financial relations" and "the *prohibition* of all intercourse between their nationals and the nationals of the covenant-breaking State," and the members further expressly undertake "the *prevention* of all financial or commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not." Such *prevention* could

ordinarily be made effective only by the use of force, and that this was understood and contemplated by the framers of this article conclusively appears from the provision quoted, which immediately follows and which makes it the *duty* of the Council to recommend "what effective military, naval or air force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League."

Article 16 further embodies an agreement for mutual support "in the financial and economic measures which are taken under this article, in order to minimize the loss and inconvenience resulting from the above measures." This means that in case a so-called economic boycott or embargo or blockade is resorted to, the United States, as the richest and most resourceful country, will have to contribute support to *all* the members of the League the world over in order "to minimize the loss and inconvenience resulting from the above measures." The article then proceeds to provide that the members "will mutually support one another in *resisting* any special measures aimed at one of their number by the covenant-breaking State." Patently, if force of arms were necessary in order to *resist* such measures, it would have to be employed; and that this would be ordinarily inevitable cannot be doubted. The provision of the eleventh Lodge reservation in relation to Article 16, which, as stated above, seems inadequate to protect the interests of the United States, merely reads as follows:

11. The United States reserves the right to



permit, in its discretion, the nationals of a covenant-breaking State, as defined in Article 16 of the covenant of the League of Nations, residing within the United States or in countries other than such covenant-breaking State, to continue their commercial, financial, and personal relations with the nationals of the United States

In fact, the Danish, Norwegian and Swedish Governments are reported as having already proposed several amendments to the League Covenant, and among them one limiting the non-intercourse provisions of Article 16. They are quoted as urging "that as the obligation to sever all economic and financial relations with the covenant-breaking State is at present automatic, it would be wise to allow some measure of freedom in its application, especially in the case of the smaller States, where the fulfilment of the obligation might possibly lead to occupation of territory by the covenant-breaking State in order to protect those economic interests which, as a result of the blockade, would be at stake "

The only safe course for the United States would be to insist upon a reservation of discretion to Congress covering every phase of Article 16, and we should not run the risk of being involved in drastic boycott, non-intercourse and blockade measures without reserving the right in each instance to have our Congress determine for itself as to the merits of the pending controversy which caused the covenant-breaking, in which we might have absolutely no concern or only the remotest interest, and likewise to determine for itself what the safety, welfare and duty of the United States then

dictated There should also be a distinct limitation upon the obligation to afford "support" "in order to minimize the loss and inconvenience" to *all* the members of the League from the automatic boycott, embargo, blockade and non-intercourse provided for in this article

### MANDATES, ETC

Many articles of the Treaty of Peace with Germany provide that the members may do certain acts, such as accept mandates over foreign colonies and territories and "the tutelage of such peoples," appoint representatives on various commissions, boards, etc. If the treaty had been ratified in its present form, the power to accept mandates, to make appointments on commissions, boards, etc., would have been vested in the President alone There were reasonable grounds for apprehending that President Wilson intended to accept mandates and appoint representatives of the United States under the League Covenant without first consulting Congress The third and seventh of the Lodge reservations, therefore, provided as follows:

3 No mandate shall be accepted by the United States under Article 22, Part I, or any other provision of the treaty of peace with Germany, except by action of the Congress of the United States. . . .

7 No person is or shall be authorized to represent the United States, nor shall any citizen of the United States be eligible, as a member of any body or agency established or authorized by said treaty of peace with Germany, except pursuant to an act of the Congress of the United States

providing for his appointment and defining his powers and duties.

As is familiar to all, pending the discussion of the League Covenant, President Wilson urged Congress to accept a mandate for Armenia, the European members of the League being desirous to be relieved from the responsibility and burden of a mandate which held out to them no prospect of commercial or otherwise profitable exploitation, but, on the contrary, an enormous burden and great sacrifices of life and treasure. As an English writer candidly intimated, the other nations desired to "disembarrass themselves" from a profitless task and responsibility, and transfer it to the United States. The information before Congress tended to show that the acceptance of this mandate would have compelled us at once to send 59,000 American troops to do police duty in Armenia and more than 200,000 if Armenia were attacked by Turkey or Russia, and that the expense would have been at least \$276,000,000 in the first year and \$756,000,000 in five years. Congress refused to authorize acceptance of this mandate by a large vote, and the scheme was abandoned, but perhaps only for the time being.

Article 22, if ratified, would have authorized the President to accept a mandate for Armenia on behalf of the United States without consulting Congress at all. That he understood that he would have such power is fairly to be inferred from his attitude, for if the third reservation would in his judgment nullify the covenant in question, of course it could only have been because

its effect would be that the President alone could determine whether we should or should not accept mandates all over the world

But even if this were not clear, and it were doubtful under the treaty whether or not Congress would have to give its consent before the United States could be pledged to accept the incalculable burdens and sacrifices of such a mandate, was it not reasonable to remove any doubt so that no President should be able to claim that under the language of the treaty he was empowered to accept mandates without any action of the Congress of the United States? The best interests of the country certainly called for some precaution and some check upon the Executive in this important respect.

#### DOMESTIC OR INTERNAL AFFAIRS

The League Covenant not only provides in Article 12 that all disputes "likely to lead to a rupture" shall be submitted "either to arbitration or to inquiry by the Council," but that "disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation . . . are declared to be among those which are generally suitable for submission to arbitration."

The Covenant then further provides in Article 15, as follows:

If the dispute between the parties is claimed by one of them, *and is found by the Council*, to arise out of a matter which by international law is solely within the domestic jurisdiction of that

party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may *in any case under this Article* refer the dispute to the Assembly. The dispute *shall be so referred* at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

It follows that if a matter were deemed by the United States to be solely within its domestic jurisdiction, it would, nevertheless, be subject to a finding of the Council to the contrary, and even if the Council in any case reported in our favor, the Council could in its discretion refer the dispute to the Assembly, or it could be so referred at the request of our adversary. Domestic questions were, therefore, not completely excluded from the competence and jurisdiction of the League.

Emigration, tariffs, labor regulations, coastwise traffic, the white slave traffic, etc., have often been the subject of treaties and international obligations, and they clearly relate to international intercourse. It was certainly a matter of grave concern to all Americans whether it could not reasonably and properly be claimed that the provisions of the League Covenant had drawn these subjects within the jurisdiction of the Council or Assembly, and whether they would not have compelled us, for example, to submit the present Japanese immigration question to the League. The Senate, therefore, proposed to safeguard our vital domestic interests, safety and welfare in this regard by the following reservation which ought to have been acceptable to the President, viz..

4. The United States reserves to itself exclusively the right to decide what questions are within its domestic jurisdiction and declares that all domestic and political questions relating wholly or in part to its internal affairs, including immigration, labor, coastwise traffic, the tariff, commerce, the suppression of traffic in women and children and in opium and other dangerous drugs, and all other domestic questions, are solely within the jurisdiction of the United States and are not under this treaty to be submitted in any way either to arbitration or to the consideration of the council or of the assembly of the League of Nations, or any agency thereof, or to the decision or recommendation of any other power

Obviously, if, as claimed by President Wilson and Governor Cox, it was not the *intention* of the League Covenant to confer jurisdiction over these domestic and political questions, so essentially American in their nature, and so vital to our future welfare, safety and independence, the President would not have objected to this reasonable and prudent reservation. Its provisions could not nullify the League Covenant unless as it stood it conferred upon the League jurisdiction over these domestic questions. And if the reservation expressed only what was implied and understood, why did the President insist that it should not be adopted? The only reasonable inference must be that he recognized that the reservation would exclude from the competence or jurisdiction of the League the domestic and political matters referred to in the reservation contrary to the intent of the League Covenant.

## ARMAMENTS

According to Article 8 of the League Covenant, which provides for the reduction of national armaments, if such reduction were once adopted, "the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council." This covenant plainly would have tied our hands and prevented the necessary increase of our armaments in any emergency created by threatened or actual war. The tenth Lodge reservation prudently and properly sought to protect the interests and preserve the independence and liberty of action of the United States if threatened with invasion or engaged in war, and therefore provided —

10. No plan for the limitation of armaments proposed by the council of the League of Nations under the provisions of Article 8 shall be held as binding the United States until the same shall have been accepted by Congress, and the United States reserves the right to increase its armaments without the consent of the council whenever the United States is threatened with invasion or engaged in war.

Yet, the President would not consent even to this reservation, and included it in his general denunciation of the Lodge reservations as actually nullifying the League Covenant. Governor Cox is quoted as declaring that on the subject of the League Covenant he is in complete accord with the President, and he must, therefore, be equally opposed to this essential reservation!

The limits of the present review prevent any further detailed examination of the remaining

articles of the League Covenant and the corresponding Lodge reservations. But what has been said ought to suffice to show that many objections to the covenants were indisputably justified and that the Lodge reservations were reasonable and imperative. Similar treatment of the other articles in comparison with the Lodge reservations relating thereto would show that all of the reservations were necessary and vital if the interests and future safety and independence of the Nation were to be safeguarded by the Senate.

#### THE POWER OF THE PRESIDENT

The Democratic platform, under the heading of the "League of Nations," among other things, contains the following statement:

The President repeatedly has declared, and this Convention reaffirms, that all our duties and obligations as a member of the League must be fulfilled in strict conformity with the Constitution of the United States, embodied in which is the fundamental requirement of declaratory action by the Congress before this nation may become a participant in any war.

The duty of Congress to declare war if clearly stipulated for in a treaty has been already discussed above, but the assertion that this Nation cannot "become a participant in any war" without the consent of Congress should be refuted, for it is most fallacious and misleading.

The President of the United States is the sole representative of the Nation in its dealings with foreign countries, and it is incumbent upon him,



as the repository of the whole executive power, to execute all our treaty obligations except those that provide for or contemplate legislative action. As stated above, if the Versailles Treaty were ratified without reservations, the President could without the consent of Congress accept mandates and appoint the representatives of the United States on the Council as well as on the various commissions and boards therein provided for.

It is being very generally contended in the course of the pending debate by Democratic spokesmen that, as under the Constitution Congress alone has the power formally to declare war, it necessarily follows that there is no danger that the United States will ever become involved in war under the League Covenant except by the deliberate action of Congress, and this view is being asserted by the Democratic candidates for President and Vice-President as adequate protection. Indeed, Governor Cox seems to think that "every high school youngster in the land" should know thus.

Now, whilst it is true that the President of the United States could not formally *declare* war, there cannot be the slightest doubt that if he saw fit to do so he could, in performance of our treaty obligations; precipitate a state of belligerency and irrevocably commit the Nation to participation in a war.

The Constitution of the United States vests all the executive power of the Nation in the President, imposes upon him the duty to "take care that the laws shall be faithfully executed," which includes

treaties which are "the supreme law of the land," and makes him the Commander-in-Chief of the Army and Navy of the United States whether in peace or in war. Whatever authority springs or is to be properly implied from these express grants is exercisable exclusively by the President. One of the sound objections to the creation of a large standing army and navy has always been that it would place too great and dangerous a power in the hands of a masterful, autocratic, or ambitious President, and this danger flows from his power to use the Army and Navy without first consulting Congress.

Let us suppose that the United States had been a member of the League at the time of the recent invasion of Poland. The President would have been authorized under his constitutional powers to send the Army and Navy of the United States to Danzig in order to perform the treaty obligations we would have thereby assumed to "preserve the territorial integrity and existing political independence" of Poland. If he could not do so, it would result, in the teeth of many precedents to the contrary, that a President could never use the Army or Navy of the United States to enforce treaty obligations if such action involved an act of war.

John Marshall, when a member of the House of Representatives, discussing in that body the famous Nash case arising under the Jay Treaty, among other things said:

The President is the sole organ of the nation in its external relations and its sole representative

with foreign nations . . . He possesses the executive power. He holds and directs the force of the nation. Of consequence, any act to be performed by the force of the nation is to be performed through him. He is charged to execute the laws. A treaty is declared to be a law. He must then execute a treaty, when he and he alone possesses the means of executing it.

Senator Beveridge in his biography of Marshall refers to this as "Marshall's historic speech which helped to direct a new nation, groping blindly and with infinite clamoring, to a straight and safe pathway."

General Sir J Frederick Maurice, at the instance of the British Government, has compiled a list of wars in the last two centuries which were or were not preceded and introduced by a formal declaration of war. He reported as follows: "Between 1700 and 1870, less than ten instances have occurred in which Declarations of War have been issued prior to hostilities. On the other hand 107 cases are recorded during this period, in which hostilities have been commenced by European powers and by the United States without declaration. The War of 1870 offered the unique example of a notice (sent by France to Germany) to the court of the assailed power, prior to hostilities. Moreover, no state has more publicly sanctioned surprises than the United States, its form of a Declaration of War being a vote of Congress that a state of war actually exists between the United States and such and such a power." And General Maurice could have added that in most instances the state of war was initiated by action of the

President of the United States without any prior authority from Congress

It will readily be recalled that in April, 1914, President Wilson, *without any authority whatever from Congress*, practically waged war against Mexico and caused a number of her citizens to be killed and the city of Vera Cruz to be captured and occupied with the loss of twelve killed and fifty wounded of the American forces, and that this was done simply because of a dispute over a salute to the American flag demanded by the President. The original offense of Mexico was the arrest of a boat load of American sailors who were soon released and for whose arrest the representatives of the Mexican Government promptly and formally expressed their regret. Had Mexico been a powerful nation capable of resisting such an external aggression, the United States would have been involved in war. But Mexico could do nothing against its powerful aggressor except to plead and protest, as it did in a note to Secretary of State Bryan, that the hostile acts of the United States would "drag us into an unequal war." Although Congress subsequently passed a joint resolution approving the course followed by President Wilson, it must be borne in mind that the high-handed action taken by him, even if deplored, could hardly have been repudiated by our Congress without humiliating us as a nation in the eyes of the world. Yet many then thought that the President acted precipitately and oppressively, and that he might well have first consulted or advised with Congress, *then actually in session*,

before undertaking such a warlike expedition and running the risk of involving the country in a war with Mexico. Had the League Covenant, however, been in force and the United States and Mexico parties thereto, the other members of the League would have been bound to protect Mexico against our external aggression. ✓

Many other precedents could be cited of acts of war by Presidents of the United States without any authority from Congress. Warlike measures and "occupations" are now being carried on by the President in Haiti and San Domingo. Among recent notable instances were President McKinley's sending of American troops to Peking in 1900; President Roosevelt's sending troops to Cuba in 1906, President Taft's sending armed forces to Nicaragua, and several expeditions of American marines during the administration of President Wilson. A famous historical example of the United States waging war without prior action by Congress was the war with Mexico, when the battles of Palo Alto and Resaca de la Palma were fought before the passage of the act of Congress of May 13th, 1846, which recognized "a state of war as existing by the act of the Republic of Mexico."

The Versailles Treaty expressly provides that if any member resorts to war in disregard of certain of the covenants of the League, "it shall *ipso facto* be deemed to have committed an act of war against *all* other Members of the League." In such a case ample authority would exist to sustain the power of the President, *without any action by Congress*, to recognize that a state of war actually existed

and to proceed accordingly. It is well settled, as Lord Stowell long ago declared, that "war may exist without a declaration on either side. It is so laid down by the best writers on the law of nations. A declaration of war by one country only, is not a mere challenge to be accepted or refused at the pleasure of the other." And our own courts have recognized that "war in all its fulness may exist without a previous declaration."

There ought, indeed, to be little doubt that a President of the United States might, if he saw fit, use the Army and Navy of the United States without prior authority of Congress in order to execute any treaty obligation and thereunder precipitate the existence of a state of war. If criticized he could argue that the Constitution expressly imposed upon him the duty to "take care that the laws be faithfully executed," that a treaty was expressly made "the supreme law of the land," and that he was free to act as Commander-in-Chief without waiting for Congress. And he would probably quote in support of his contention the language of the Supreme Court in the famous *Prize Cases* during the Civil War, to the effect that although the President did "not initiate the war," he was "bound to accept the challenge without waiting for any special legislative authority," and "to meet it in the shape it presented itself, without waiting for Congress to baptize it with a name; and [that] no name given to it by him or them could change the fact" that he was thereby executing the provisions of a valid treaty.

It is, of course, appreciated that the doctrine

of the *Prize Cases* ought to be limited to a civil war or an actual invasion of national territory by a foreign nation, when immediate action would be imperatively required, but much in the opinion of the majority, particularly, in view of the grounds of dissent, might be cited in support of the contention that, as it was the duty of the President to see that treaties should be faithfully executed, he was bound to meet force by force if immediately necessary to "preserve as against external aggression the territorial integrity and existing political independence" of any member of the League.

It must not be forgotten that President Wilson probably as much as any one else was responsible for the indefensible and impracticable frontier assigned to Poland under the Versailles Treaty, ever inviting and exposing her to attack from Russia, as well as for the blunder of denying to Poland the control of Danzig, which control was urged by France. The creation of Danzig as a neutral free city independent of control by Poland was certain to place Poland at a disadvantage and perhaps at the mercy of a foe whenever engaged in war. The refusal of Sir Reginald Tower to allow the landing at Danzig of war munitions for Poland, so essential for her defense, might easily have involved her ruin. If American men-of-war had been sent to Danzig to use force against the Russians, this might have involved nothing less than precipitating a war with Russia by act of the President and without any authority whatever from Congress so to do, and would have been an exercise of power on his part quite in accordance with precedents.

It is, therefore, always to be borne in mind, in considering the covenants of the Versailles Treaty, that if the United States assumes treaty obligations which contemplate force for their execution or performance, there is the danger that the President without consulting Congress may take action which will irrevocably commit the Nation to war and all its incalculable consequences. That danger would ever be present under the League Covenant unless duly averted by appropriate reservations.

### III

#### THE HONOR OF THE NATION

There remains to be discussed the contention of President Wilson and Governor Cox that the honor of the country is involved and that under some "accepted standard of international morality," as the Democratic platform phrases it, the United States is bound to ratify the Versailles Treaty without amendments or reservations no matter how objectionable and dangerous its covenants may be, and that we cannot now honorably make a separate peace with Germany.

Every nation attending the Peace Conference at Versailles was under settled principles of international law chargeable with knowledge that the powers of President Wilson were expressly limited by the Constitution of the United States, that he could not bind the United States to a treaty, or thereby commit the honor of the American people, without first obtaining the advice and consent of the Senate, and that until its consent and con-



currence were obtained the United States would not be bound; and further they all knew that the people of the United States had recently refused to continue the President as their "unembarrassed spokesman" in foreign as well as domestic affairs, and they had definite warning from the Senate that it did not concur in the President's views. Indeed, in the supplemental defensive treaty of alliance between France and the United States, which was executed at Versailles on June 28th, 1919, the same day as the Treaty of Peace with Germany, it was specifically provided that "the present treaty will be submitted to the Senate of the United States at the same time as the Treaty of Versailles is submitted to the Senate for its advice and consent to ratification." This certainly demonstrates that the representatives of the French Government who signed the supplemental treaty, Messrs. Clemenceau and Pichon, clearly understood that President Wilson had no authority to bind the United States without the action of the Senate, and France and England at least cannot now claim that their representatives assumed that our President had power to bind us or finally to commit our national honor.

On October 24th, 1918, on the eve of the Congressional election of that year, President Wilson, who was then conducting negotiations with Germany with regard to an armistice, issued an appeal or proclamation in which he referred to the fact that "the peoples of the allied countries with whom we are associated against Germany are quite familiar with the significance of elections,"

declared that the return of a Republican majority to either House of Congress would be "interpreted on the other side of the water as a repudiation of my leadership," and solemnly appealed to the American people to elect a Democratic Senate and House of Representatives, in order, as he expressed it, that during this, "the most critical period our country has ever faced, or is likely to face in our time," he might continue to be our "unembarrassed spokesman in affairs at home and abroad." In this proclamation, he declared to the electorate of the country:

If you have approved of my leadership and wish me to continue to be your unembarrassed spokesman in affairs at home and abroad. I earnestly beg that you will express yourselves unmistakably to that effect by returning a Democratic majority to both the Senate and the House of Representatives. I am your servant and will accept your judgment without cavil

The American people answered this extraordinary appeal adversely to President Wilson, and returned a Republican majority to both Houses of Congress. They thereby expressed themselves unmistakably that a Republican majority should represent and act for them in cooperation with the President, in affairs at home and abroad, which, of course, included the making of the Treaty of Peace with Germany. The significance of the 1918 election was noticed and fully appreciated abroad, as the President had conceded would be the fact

Instead of accepting "without cavil" the judgment of the American people and availing — as was "his plain duty" — of the privilege of ad-

vising with the Senate, many of whose members were much more familiar than he was with our foreign relations and had had far more experience than he had had with the subject of treaties, President Wilson deliberately elected to disregard and defy that body.

When the plan for a Society or League of Nations was first presented to the Paris Peace Conference in February, 1919, it was regarded by all its authors to be merely a tentative scheme, and it was not contemplated or understood that any nation had definitely committed itself. Mr. Bourgeois, speaking on behalf of France, in the presence of President Wilson, said:

We do not present it as something that is final, but only as the result of an honest effort to be discussed and to be examined not only by this conference, but the public opinion of the world.

And the Premier of Italy declared that "the present debate has for its object to bring the whole scheme before the public opinion of the world."

The tentative plan thus proposed, if adopted, would impose extensive treaty obligations and alliances upon all the members of the League, and, so far as the United States was concerned, treaty obligations and alliances such as had never before been entered into by it, and such as would constitute a radical departure from long-established American policies, precedents and traditions. It contemplated, as we have already seen, that armed force should be always in the background of the whole programme, that breach of its principal covenants should constitute an act of war and

involve warlike measures, and that there should be a definite pledge of the national faith and honor of all the members of the League, including the United States, to guarantee as against external aggression the territorial integrity and political independence of all the members of the League, besides other momentous obligations and inevitable sacrifices.

The declarations made at the time the contents of the draft of the proposed League were first published at the Peace Conference brought out in the clearest relief that the whole plan was being submitted to the public opinion of the world for advice and approval. That the scheme startled competent American public opinion and immediately caused doubts and protests from all over the country is known to all. Anxious foreign and American observers assumed under these circumstances that the President of the United States would as a matter of course forthwith submit the proposed plan to the Senate for its advice and consent as provided in the United States Constitution, and would seek to secure the benefit of the coopération of the American body best qualified by long training and special experience to aid him in protecting the interests of the United States and arriving at a wise and patriotic conclusion. As he himself had taught, whilst he was still president of Princeton University, "the true spirit of the Constitution" and "his plain duty" alike dictated that as President of the United States he should seek to ascertain the advice and consent of the Senate upon the subject of the most impor-

tant treaty ever made by the United States, before he attempted to commit the Nation irrevocably to a *fait accompli*. The President, however, not only did not submit the draft to the Senate for its advice, but proceeded at once to issue a challenge to that body, and to appeal to the people over their heads, in order that public clamor might be employed to coerce the Senate and override the judgment and conscience of its members. On February 19th, 1919, Senator Poindexter in the Senate warmly protested against this evident purpose to disregard the Senate whilst a campaign of propaganda was being conducted throughout the country at the instance of the President.

President Wilson arrived from France on February 24th, ten days before the expiration of the term of the Sixty-fifth Congress. Instead of first submitting the draft of the League Covenant to the Senate, or at least going through the form of seeking its advice and consent, he issued on landing what was intended to be a challenge to the Senate in most intemperate language. Addressing the audience called together at his instance to greet him in Boston in order that he might launch his attack upon the Senate, he boastfully delivered a prepared speech carefully planned to inflame the American people and prejudice them against their constitutional representatives in the Senate, and declared:

I should welcome no sweeter challenge than that. I have fighting blood in me, and it is sometimes a delight to let it have scope, but if it is challenged on this occasion, it will be an indulgence

The next day, February 25th, Senator Martin of Virginia, the Democratic leader in the Senate, after a conference with the President at the White House, announced that an extra session would not be called until after the President's return from Paris following his second trip to Europe and that he would stay in France until his mission was accomplished. It then became evident that the President did not intend to submit the draft plan of the League of Nations to the Senate for its advice and consent, but that he would proceed independently and defiantly to complete the negotiations and attempt to commit the United States without consulting the Senate. Whilst thus contemptuously ignoring the Senate, notwithstanding "his plain duty" under the Constitution to seek its "advice and consent," and notwithstanding its constitutional duty and responsibility as part of the treaty-making power of the Nation, he continued his attempt to coerce the Senate and prevent its participation in protecting American interests by intemperate and unfair appeals to public prejudice and by public challenges to Senators, statesmen and jurists with "pigmy minds" who dared to differ with him or question his wisdom or purpose or leadership. In pursuance of this plan, he delivered an address in New York on March 4th, at the Metropolitan Opera House, on the eve of his return to Europe, in the same offensive, militant and intolerant spirit as the address at Boston. He again appealed to the people against the Senate, and defiantly declared:

The first thing that I am going to tell the people

on the other side of the water is that an overwhelming majority of the American people is in favor of the League of Nations . . . When that treaty comes back, gentlemen on this side will find the covenant not only in it, but so many threads of the treaty tied to the covenant that you cannot dissect the covenant from the treaty without destroying the whole vital structure. The structure of peace will not be vital without the League of Nations and no man is going to bring back a cadaver with him

To the United States Senators, who were anxiously following these public declarations of the President, it was obvious that he intended to arrogate to himself, in violation of the spirit and letter of the Constitution, the sole power not merely of negotiating but of finally fixing the terms of the proposed League of Nations without the advice and consent of the Senate, and that he was deliberately endeavoring to commit the Nation in the public opinion of the world and attempting to coerce the necessary vote in the Senate by means of public agitation and propaganda and by asserting that the honor of the Nation was committed. Whether consciously or unconsciously, the President was about to mislead Europe as to public opinion here by professing that he had a special "mandate from the American people," that he had "no choice but to obey their mandate," that he alone understood and represented the overwhelming public opinion of America, and that he "would not dare abate a single item of the programme which constitutes our instruction."

President Wilson's representations to Europe had

to be promptly challenged and guarded against. There was very grave danger that the foreign nations at the Paris Conference, forgetful of the significance of the American election in November, 1918, and the effect of the provisions of the American Constitution, would be misled into believing that the President really had a mandate from the American people and was authorized to speak for, and to pledge the faith of, the United States to any treaty that he might see fit to negotiate or to *force* upon his reluctant fellow-confererees. A question of national honor might well arise from any such misunderstanding. No prophetic vision was needed to perceive that if the President of the United States forced his views upon the Paris Conference by publicly proclaiming and reiterating that he had a mandate from "the overwhelming majority of the American people," and thereby obtained the reluctant and hesitating consent of the conferees to his plan for a League of Nations, against their own judgment, as an integral and inseparable part of the Treaty of Peace with Germany, it would be asserted afterwards that the United States was in honor bound and the Senate estopped from refusing to ratify. It was also plain that the cry would be heard abroad that the American Senate or at least leading American Senators ought not in common fairness and honesty to have remained silent when the President was publicly making and reiterating his statements of an American mandate, but that they ought in some way to have notified the Paris Conference that the President had no mandate such as he claimed to have,



that his views were not approved by the American Senate, and that if the Paris Conference nevertheless proceeded to formulate a definitive treaty of peace in accordance with the President's demands, as outlined in the draft plan of the League of Nations and published far and wide, it would be rejected.

As soon as it became evident that the President did not intend to submit the draft plan of a League of Nations to the Senate for its advice and consent before its final adoption, and that he did not intend to convene the Senate in extra session until the provisions of the Treaty of Peace with Germany had been definitely settled and probably executed on behalf of the other nations, an effort was made by Senator Lodge and his associates to give public notice and to make a public record of the attitude of the Senate. ✓ As patriotic, honest and far-seeing statesmen they could do no less. The impending expiration of the term of the Sixty-fifth Congress rendered the formal adoption of an appropriate resolution impracticable, because its consideration was objected to by the Democratic leader, Senator Martin. Thereupon Senator Lodge incorporated in the "Congressional Record" for March 4th, 1919, the day Congress adjourned, a written declaration, signed by thirty-seven Republican Senators, setting forth "that, if they had the opportunity, they would have voted for the [following] resolution," viz.:

*Whereas*, Under the Constitution it is the function of the Senate to advise and consent to or dissent from the ratification of any treaty of the

United States and no such treaty can become operative without the consent of the Senate expressed by the affirmative vote of two-thirds of the Senators present, and

*Whereas*, Owing to the Victory of the arms of the United States and of the nations with whom it is associated, a Peace Conference was convened and is now in session at Paris for the purpose of settling the terms of peace, and

*Whereas*, A committee of the conference has proposed a constitution for a League of Nations and the proposal is now before the Peace Conference for its consideration; now, therefore, be it

*Resolved*, By the Senate of the United States, in the discharge of its Constitutional duty of advice in regard to treaties, that it is the sense of the Senate that while it is their sincere desire that the nations of the world should unite to promote peace and general disarmament, the constitution of the League of Nations in the form now proposed to the Peace Conference should not be accepted by the United States, and be it

*Resolved further*, That it is the sense of the Senate that the negotiation on the part of the United States should immediately be directed to the utmost expedition of the urgent business of negotiating peace terms with Germany satisfactory to the United States and the nations with whom the United States is associated in the war against the German Government, and the proposal for a League of Nations to insure the permanent peace of the world should be then taken up for careful and serious consideration.

Senator Lodge explained in the Senate that this would serve as notice to the President *as well as to the Peace Conference* that the necessary two-thirds majority in the United States Senate could not be

obtained for the ratification of the proposed plan of a League of Nations unless it was materially amended, and it is well-known that this resolution was published in Europe and that the delegates of all nations attending the Peace Conference at Paris were fully aware of its contents. In other words, more than one-third of the entire Senate of the United States, constituting three-fourths of its Republican majority and representing States containing nearly two-thirds of the whole population of the United States, notified both the President and all the foreign nations assembled at the Peace Conference at Versailles of the attitude of these Senators as plainly and unequivocally as language could formulate the notice. Yet, although the President and these foreign nations proceeded with full knowledge and in entire disregard and defiance of this notice, it is now, nevertheless, claimed by President Wilson and Governor Cox that the honor of the Nation is involved and that the Senate has brought disgrace and odium upon us because it has not ratified a treaty and thereby assumed obligations which the conferees saw fit to enter into in direct defiance of the solemn declarations and warnings by these Senators, by such distinguished American statesmen as Senator Root and Judge Hughes, and by a large part of the American press.

The familiar details above recited have been recalled at some length because of the assertion that is being so constantly made abroad and by advocates of the League Covenant among us that the League of Nations was forced upon the Peace

Conference by the President of the United States in pursuance of an alleged mandate from the American people, that other countries entered into the Versailles Treaty in good faith fully believing in such a mandate and relying upon the honor of the United States and the representations of its President, that this faith should be now kept, and that somehow the United States should be estopped from refusing to ratify a treaty which the majority of the Senate and it is believed the majority of the American people disapprove because involving dangerous obligations and alliances with foreign nations and imposing obligations which this country ought never to assume and alliances into which it ought never to enter.

Surely, the facts refute all charges of bad faith and explode the pretense that the honor of the Nation is now involved or that we are estopped by some alleged "standard of international morality," as the Democratic platform puts it. Indeed, Viscount Grey of Falloden, lately British Ambassador to the United States, in his famous letter to the London "Times" last January, shortly after his return to England, said:

No charge of bad faith or repudiating signatures can be brought against the action of the United States Senate. By the American Constitution it is an independent body, an independent element in the treaty-making power. Its refusal to ratify the treaty cannot expose either itself or the country to a charge of bad faith or repudiation.

Nor is it fair to represent the United States as holding up the treaty solely from motives of party politics and thereby sacrificing the interests of the other nations for this petty consideration. . . .

Nor is it true to say that the United States is moved solely by self-interest to the disregard of higher ideals. . . . But an American might fairly reply that whereas the self-interest of other countries who have conquered in the war is now apparent in the desire to secure special territorial advantages, the self-interest of the United States takes the less aggressive form of desiring to keep itself free from undesirable entanglements, and that it does not lie with other countries to reproach the United States.

This recognition of the true attitude of the United States Senate and the American people undoubtedly expresses the view of all fair-minded, thoughtful and competent Europeans and Asiatics who have studied the conditions in America preceding and surrounding the consideration of the League Covenant. Furthermore, after a careful study of credible and reliable expressions of public opinion in Great Britain, France, Belgium and Italy, it can be confidently asserted that these nations, if not every member of the League as it is at present constituted, would accept the reservations proposed by the Senate and would not regard them as destructive of the Covenant as a whole or as doing more than to eliminate and exclude certain objectionable provisions so far as the United States was concerned. But no attempt has been made by President Wilson to ascertain the views of other nations as to the reservations proposed by the Senate. He has not submitted the proposed reservations to them. He has insisted that the Covenant of the League of Nations must be ratified without reservations, and he con-

tinues to insist that the reservations proposed by the Senate and approved by a majority of its members (*i. e.*, 28 Republican and 21 Democratic Senators) would nullify not merely the obligations of the particular articles objected to but the Covenant of the League as a whole and defeat its intent and purpose.

It should, moreover, be constantly borne in mind that it was President Wilson who twice insisted, notwithstanding the expressed views and convictions of a majority of the Senate, that the ratification of the Versailles Treaty with the Lodge reservations should be defeated, that it was twice defeated at his command by the votes of Democratic Senators, that the necessary two-thirds of the Senate could more than one year ago and at all times since have been immediately obtained if it had not been for the uncompromising, autocratic and intolerant attitude of the President, and that it was he alone who deliberately planned and insisted that there should be at the coming election "a great and solemn referendum."

Finally, on this aspect of national honor, it is claimed that it would be dishonorable for the United States now to make a separate peace with Germany two years after the termination of actual war and after every one of the countries associated with us against Germany has entered into a definite and final treaty of peace with her. Hence, the situation deliberately planned is said to create the dilemma that we must either ratify an objectionable treaty without any essential amendments or reservations because other nations have seen fit

to ratify it, or else make a separate peace with Germany, which it is pretended would be dishonorable.

In his letter of January 8th to the Chairman of the Democratic National Committee, President Wilson among other things defiantly and uncompromisingly said:

We cannot rewrite this treaty. We must take it without changes which alter its meaning, or leave it, and then, after the rest of the world has signed it, we must face the unthinkable task of making another and separate treaty with Germany.

No stronger indictment could be drawn against the President himself than this picture of the dilemma into which he has thrust the United States by his attitude towards the Senate. He had had timely notice; he had had ample opportunity to obtain its advice and consent before any of the other nations had signed the Versailles Treaty, but he had deliberately refused to do so and thereby created the present situation.

The Versailles Treaty of Peace with Germany of June 28th, 1919, is by its terms in full force and effect as to all the nations that have ratified it, and if the United States never ratifies the treaty, it will nevertheless remain in force and effect. If the nations at war with Germany had deemed the participation of the United States in the Versailles Treaty essential, they would, of course, have provided that the treaty should not enter into force as to any of them until the United States had duly ratified it. Such undoubtedly would have been the action taken if it had been thought that the

United States was a necessary and indispensable party.

To the contrary, however, with full knowledge of the attitude of the American Senate and in doubt as to whether the President truly represented American public opinion, the conferees at Versailles decided to proceed without the United States.

In signing the Versailles Treaty, the President must have realized that if the American Senate did not ratify it, the United States would have to make a separate peace with Germany, just as every other signatory must have so distinctly understood as clearly as if that implication had been expressly recited. The situation thus deliberately created was that the United States would, of course, be at entire liberty to negotiate a different and hence a separate peace with Germany if the Senate did not ratify the treaty then being signed. To repeat in different words but to the same effect, if the Versailles Conference had understood or intended that the treaty should not "enter into force" until and unless the United States became a party thereto and assumed its obligations, the document would have so provided

There should be, and there will be found, no difficulty or embarrassment in now making a separate peace with Germany. No one can doubt that her statesmen would coöperate in putting an end to the technical state of war and restoring our relations to a peace basis. Any competent statesmen could readily draft in a few days a separate treaty protecting and safeguarding American interests, and there would probably be no



delay so far as Germany was concerned. Due regard could be had in such separate treaty for the interests of the Allied and Associated Powers. Either in such treaty with Germany or independently, the United States could declare its adherence or accession, as it is technically termed, to any part of the Versailles Treaty which it approves and which it is willing to accept and be bound by. Indeed, the Versailles Treaty could be ratified with the exception of Parts I and XIII providing respectively for the League Covenant and the creation of an International Labor Organization, and representatives of the United States could serve on the various commissions and boards as impartial members representing a disinterested party, without our otherwise becoming bound by its provisions. This would be our safest course, and the amendment or revision of the League Covenant could then be taken up by competent representatives.

### CONCLUSION

The issue between the two parties and the respective candidates is being very clearly and / closely drawn.

On the one hand, the Democratic candidate for President is in complete accord with President Wilson and, if elected, will equally endeavor to force acceptance of the League Covenant without any other reservations than those which merely interpret, not exclude or eliminate, the present objectionable covenants, or, as the Democratic platform pledges, with "reservations making clearer

and more specific the obligations of the United States to the League Associates." A vote for Governor Cox is a vote in favor of the League Covenant without amendments or reservations safeguarding American interests and honor

On the other hand, the Republican candidate for President is unalterably and rightly opposed to the League Covenant in its present form and, if elected and the League be still desirable when he comes into office, will insist upon such modifications of the Covenant, whether by way of amendment, reservation, or redrafting, as the protection of the interests of the United States imperatively demand and as the circumstances may permit. A vote for him is a vote against the League Covenant in its present objectionable and dangerous form. He has declared himself in favor of the principle of a Society or League of Nations; he is willing to accept all in the present League Covenant that is safe for the United States, and he favors a Permanent Court of International Justice. Republican statesmen have long advocated a Society or League of Nations; they have recognized that the present League Covenant contains much that is good and desirable, and a Republican President and Senate can be relied upon to work out, with the assistance of really capable, reliable and patriotic experts, the great problem of formulating and adopting practical measures calculated to bring about permanent peace and diminish, so far as humanly possible, the recurrence of war. In the performance of this difficult and complex task, the greatest problem that now faces humanity, the American

people can better rely upon Senator Harding than upon Governor Cox, and the honor, humanity and generosity of America are not likely to be compromised or its repute and prestige impaired or dimmed when confided to the keeping of President Harding and a Republican Senate.

## AMERICA'S DEBT TO FRANCE<sup>1</sup>

WASHINGTON declared that the generosity of Louis XVI to America during the War of the Revolution "must inspire every citizen of the States with sentiments of the most unalterable gratitude." The remembrance of our debt to France has undoubtedly been dim at times during the course of our history since 1783, but there are many evidences of its full revival in our own day. The heroism and fortitude and the misfortune and self-sacrifice of the French people during the past two years have reawakened in every section of the United States, East and West, North and South, the old feeling of sympathy, affection and gratitude. Even among our citizens of German birth or descent, there is warm sympathy with France, unstinted admiration of her heroic spirit and conduct, and full appreciation of the historic ties which bind the hearts of Americans to the French people.

The celebration of the anniversary of the birth of the Marquis de Lafayette is singularly fitting and appropriate, and should be looked upon as a patriotic duty. Among the generation of Frenchmen who helped us in gaining our independence, he will always be the foremost figure as the incarnation of the spirit of pro-American sympathy and enthusiasm that produced the Treaty of Al-

<sup>1</sup> Originally published in and now reprinted from the New York Sun of September 3d, 1916

hance of February 6th, 1778, and made possible our ultimate triumph. While on board "La Victoire" on his way to America, he wrote to his wife that he regarded his coming military service under Washington, what it truly turned out to be, as "a brevet of immortality." He earned immortality by heroism, soldierly zeal, uprightness and loyalty of the highest order, and he won, not only the undying admiration and affection of Washington, but the universal and immutable esteem and affection of the American officers and soldiers with whom he served.

In the past we have been charged by some French writers with ingratitude. The most dishonorable and unpardonable of all crimes, individual or national, is ingratitude, and it is to be hoped that at an early day some competent historian will take up and wholly refute this charge. At any rate, I pray that the charge may not be made of this generation of Americans.

Such an historian might eloquently point out the strange nemesis which has followed the history of the French on our continent. It is a very long and complicated and an extremely sad story, each series of splendid and glorious exploits of Frenchmen being followed by disaster and eclipse. Everywhere on our continent, there are evidences of heroic services by French explorers, soldiers, priests and scholars — everywhere monuments, ideals, traditions and institutions which have sprung from French faith, courage, genius and art; but nowhere has France secured adequate return or recognition, nowhere has she reaped material rewards from the

seed she sowed Consider French Canada, planted by the sacrifices of the children of France and growing up and prospering under another flag!

Such an historian would also be able to explain the causes of the misunderstanding, irritation and friction which unfortunately arose between the governments of the United States and France, and which for more than a century clouded their relations and chilled the underlying feeling of cordial sympathy and affection between the two peoples. Too often the governments held each other at arm's length, and functionaries and politicians often misinterpreted the feelings of the people and misrepresented the permanent and best interests of their respective countries The irritation began in 1790 with our first tariff law and the tonnage duty it imposed, which the French believed was aimed at them and which led to retaliatory measures. Then came President Washington's stand for neutrality in 1793, and Genet's intolerable affronts to Americans, compelling the request for his recall. The friction became more acute in 1798 by reason of the many high-handed acts of the Directoire Indeed, we were at one time almost drifting into war, for there were actual hostilities at sea between American and French vessels. Then followed the treatment by Congress of the claims of the Frenchman Beaumarchais and his heirs, and our haggling over the account, which was not settled until 1835, thirty-six years after the death of Beaumarchais, and which left to succeeding generations of Americans a reputation among Europeans for parsimony and ingratitude.

It shames us to have to confess that Congress, after a delay of more than half a century, forced a settlement of a just claim for war supplies furnished by Beaumarchais during the Revolution, on the basis of our paying his heirs only twenty-five cents on the dollar. In fact, we paid one-seventh of the amount, adding interest at three per cent., which forty-two years before Alexander Hamilton had decided was justly due to Beaumarchais. Our treatment of this claim, whatever the excuse and however our National Government may have been misled by the jealousy and venom of Arthur Lee, will ever remain a blot on our fame. It is one of those pages in our history which should be expunged even at this late day.

The existing coolness was intensified in 1835-1836 by the rudeness of President Jackson in connection with the French Spoliation Claims. This led to the suspension of diplomatic relations, the United States recalling Livingston from Paris, and France recalling Pageot from Washington, and bringing us very nearly to war. Later came the unfriendliness of Napoleon III during our Civil War, and then his ill-fated campaign in Mexico, which was regarded by us as a direct menace to our interests as well as a deliberate violation of the Monroe Doctrine. During the Spanish-American War of 1898 the affection of Americans was again chilled by the natural sympathy of France with her neighbor Spain, although the conduct of the French government was irreproachable.

Finally, the purchase by us in 1902 of the property of the bankrupt French Panama Canal

Company eliminated the last real danger from conflicting interests, and during the past thirteen years — contemporaneous with the service at Washington of America's staunch friend, Ambassador Jusserand — Franco-American relations have been on a more satisfactory basis than at any time since 1790. Throughout all the years, however, the American people have never forgotten how much France contributed to the ultimate success and triumph of the Revolution

It should be remembered that long before the Treaty of Alliance of February 6th, 1778, the French had rendered much material assistance to the American cause. Aside from the free gifts of Louis XVI and the personal services and contributions of such men as Lafayette, much of the effective equipment of the Continental Army had come from France. Our own historian Perkins in his admirable "France in the American Revolution," writing of Beaumarchais' contributions, says, "Beaumarchais' ships escaped the perils of the sea and the vigilance of British cruisers. They reached Portsmouth and landed greatly needed supplies in time to be used against Burgoyne. Many a soldier who marched in that campaign [June-October, 1777] wore shoes on his feet, a coat on his back, and carried a gun on his shoulder, which came from the magazines of Louis XVI, and had been procured and furnished by the author of the 'Barbier de Seville'." Several more ships, loaded by Beaumarchais, were allowed to sail from France and in due time reached their destination. By September, 1777, he had shipped munitions of war



to the value of five million livres.' But not until February of the following year was the formal Treaty of Alliance signed.

The preeminent service rendered by France during the American Revolution has never, it seems to me, been adequately recognized by American historians, with the exception of Perkins — certainly not in the histories used in our schools — perhaps in some instances because of the natural disinclination to concede how near the Americans came to utter failure, and perhaps also because of the equally natural hesitation to give to our allies most of the credit for success. Yet, surely, no one reading the records of those days, as they are now at hand for our perusal, can fail to realize that, without the soldiers and funds and support of France, the American Revolution would have been crushed. The victory was a joint victory, and not ours alone.

The efforts of the Alliance Française, the Lafayette Fund for French Soldiers, the Museum of French Art, the France-America Society, the Lafayette Anniversary Committee, and other organizations which have recently sprung into activity, have undoubtedly revived the study of the services rendered to our country by France and brought renewed and fuller appreciation and recognition of our debt to the French people. The celebration generally of Lafayette's birthday must be particularly stimulating. Appropriate and eloquent tributes will be paid to his services, as well as to the services of his French companions in arms; and to the generous pecuniary assistance of

King Louis and France. Brandywine, Valley Forge, Monmouth Court House and Yorktown will always furnish a deep source of inspiration to those who write or speak of Lafayette. Crowning all is the love of Lafayette for Washington, whom he idolized; Lafayette's superb loyalty to his chief, the affection as of father to son with which the grandest and noblest of all Americans regarded the young and ardent and idealistic French aristocrat, the gallant Black Musketeer of King Louis' household, who served so bravely and unselfishly by his side. In truth, the name of Lafayette must always be associated in the hearts of Americans with that of Washington. Those who have visited Mount Vernon will at once recall "Lafayette's room." One of the finest pages of American history was written when President Andrew Jackson, on hearing of the death of Lafayette in 1834, ordered, on behalf of the whole American people, "that the same honors be rendered upon this occasion at the different military and naval stations as were observed upon the decease of Washington, the Father of his country, and his contemporary in arms." It is a poetic and beautiful sentiment which has prompted the Alliance Française to resolve to lay on September 6th at the base of the statues of Washington and Lafayette in Union Square in the City of New York identical wreaths of American flowers intertwined in the colors of the two flags — the tricolor of both nations

Notwithstanding the views of some historians, many Americans are convinced of the truth of the following propositions:

1. That the assistance rendered America and the sacrifices made by Lafayette and his companions in arms during the American Revolution were disinterested and prompted by the almost universal enthusiasm of the French people of that generation in all classes for the American cause

2. That Louis XVI and his ministers, Turgot, Necker, Vergennes, etc, did not believe that the interests of France would be promoted by a war with England, but were opposed to it, and predicted that its cost would be ruinous

3. That the signing of the Treaty of Alliance of 1778 and France's active participation in the war were forced upon the King and his ministers by the invincible sympathy and constancy of the French people themselves, who were ready and willing to make the necessary sacrifices, and that in entering the war France had no other object than to help us secure our freedom and independence.

4. That the ultimate cost of the war was ruinous to France and vastly greater than most Americans have ever realized.

The French King's advisers well knew that the material interests of France required her to remain neutral and profit by the embarrassment of England, and they would never have consented to war if their hands had not been forced by the popularity of the American cause and the ardent sympathy of the French people with our struggle for independence. The latest English historian upon the subject, Sir George Otto Trevelyan, writes in his "American Revolution" that "if France had been content to maintain a pacific

attitude throughout the whole period of the American troubles, she would have been rewarded by an immense accession of wealth, and a secure and exalted position among the nations of the world. Those advantages, moreover, would have accrued to her automatically and inevitably, without risk or exertion on her part."

In order to realize the extent of the "magnanimous policy" of France towards America, as Hamilton expressed it, every American should read the Treaty of Alliance of February 6th, 1778, unique in our own history, and the most generous in the annals of the world on the part of a great nation dealing with a weak people. The Prime Minister of Spain pronounced it "a glaring instance of Quixotism." In it France stipulated for no advantage to herself and no reimbursement. On the contrary, she agreed to make no claim, whatever might be the outcome of the war — even if Canada were reconquered.

There were, of course, all kinds of intrigues and collateral movements, such as the pressure from the military party and from Frederick of Prussia and the natural longing for revenge on England. Nevertheless, the controlling influence was the general demand of the French people, a demand fundamentally unselfish and which ultimately became irresistible. Lafayette more than any other individual brought about this demand. And we should also remember that the French Queen, Marie Antoinette, was enthusiastically pro-American.

I hesitate to stir up the old and buried con-

America from Louis XVI and various individual Frenchmen I doubt whether even the direct loans were ever entirely repaid; certainly the debt to Beaumarchais was never fully discharged, and none of the personal gifts was ever returned, so far as I now recall, except in the case of Lafayette. We must accept the statement of Pickering, our Secretary of State in 1797, who in a despatch to the American Minister at Paris declared that "all the loans and supplies received from France in the American War, amounting nearly to 53,000,000 livres," had been paid in 1795, that is, twelve years after the Treaty of Peace.

There still remains the far greater item, never repaid, of the actual cost to the royal treasury of the participation of France in the war. It was this cost, as matter of fact, that bankrupted the government of King Louis and was one of the principal causes of the French Revolution seven years later. Nor did the King of France plunge into the Franco-American Alliance and the consequent war with England in ignorance of its cost and danger. Turgot had pointed out to him that the first cannon shot in any such war would mean the bankruptcy of France. As it turned out, the salvation of America involved the utter financial ruin of the French monarchy.

There is, however, much uncertainty as to the actual figures of the cost to France of participation in the war. The French archives show a direct expenditure of 1,507,500,000 livres, but these figures do not include payments made in and after the year 1783, which must have been very large.

Professor Marion of the College of France has expressed the opinion that the total expenditures were fully 2,000,000,000 livres. Much information will be found in his *Histoire Financière de la France depuis 1715* and in Gomel's *Les Causes Financières de la Révolution Française*. Fiske in his "Critical Period" puts the expenditure of France at 1,400,000,000 francs. Trevelyan states the following in a note to his "American Revolution": "It was calculated that, between the years 1778 and 1783, the war with England cost the French Treasury forty-eight million pounds sterling. It was the main cause of those financial difficulties which led immediately up to the Revolution of 1789." This would be equivalent to 1,200,000,000 livres (francs), or 240,000,000 dollars, at a time when the purchasing power of money was very much greater than in the twentieth century. Indeed, it is probably not an exaggeration to say that the purchasing power of gold was then more than three times what it is in our day.

In an introduction to Perkins' "France in the American Revolution," Ambassador Jusserand wrote in 1911 as follows: "Ruinous it was indeed, costing the French treasury seven hundred and seventy-two millions of dollars, but public opinion remained faithful to the struggling States. The people groaned under the weight of taxation, but never grumbled at the expense of such a cause. Peace came, France kept her word; she did not try to recover any of her possessions on the American continent, she made a pro-American peace, not an anti-English one. Public opinion again was

fully satisfied, what it wanted had been secured; there were no protests against the moderation shown towards the adversary, the joy was universal. Years after the war the same pro-American feelings which had apparently taken deep root still prevailed, as shown by the French National Assembly's adjourning at the news of the death of Franklin, the French army going into mourning at the death of Washington, and the glowing eulogies of the new republic still sent home by its French visitors."

M. Jusserand in a note refers to Perkins' work as his authority for the figure "seven hundred and seventy-two millions of dollars," but, as he informs me, he did not independently verify Perkins' figures in view of the latter's reputation for accuracy. Perkins, however, did not say whether it was dollars or livres. His work was published after his death. Since corresponding with his widow, it now seems to me that Mr. Perkins may have meant livres and not dollars, although livres would represent a figure much below the total cost as shown by the records now available. In a note found among Mr. Perkins' papers is the following: "Chas. Gomel, *Les Derniers Controleurs* (pp 36-37): A pamphlet appearing in July, 1782, calculated that the amount which American Independence had cost down to that time was 772 millions and that commercial relations had not become more important." When this pamphlet was published, the expenses of the year 1782, part of those of 1781, and, of course, those which accrued in 1783, were not known and were not included in the estimate.

In considering the inevitable expense assumed by France, it must be borne in mind that the burden was not confined to sending fleets and armies to America, the West Indies and the Floridas, but necessitated a very costly naval war with the greatest maritime power of history, and required also the protection of French ports and dependencies by fleets and armies, and campaigns not only in America but also in Europe, Africa and Asia. The great naval victory of Suffern was won in Asia. It is, therefore, quite possible, if not probable, that the total cost of the war to France during the five years of its continuance was fully \$772,000,000, although the official records, as preserved but not by any means complete, do not support so high a figure.

But even if the total was only 1,200,000,000, or 1,500,000,000 or 2,000,000,000 livres (that is, approximately 240,000,000, or 300,000,000, or 400,000,000 dollars), and not 772,000,000 dollars, the amount was still stupendous for those days and for a country having a population estimated at 22,000,000. This prodigal outpouring of treasure brought France practically no advantage or benefit; in fact, less than no gain, except the withdrawal of the English Commissioner from Dunkirk.

The amount expended in our cause has certainly never been repaid by us in any way or form; and whilst this expenditure for our benefit could never be regarded strictly as a debt in the commercial or business sense, it certainly was and still is a moral obligation for generous and unselfish service rendered to us in our dire need at the most critical



period in our history, an obligation which, in the noble words of Washington, must always call for "the most unalterable gratitude" — unforgettable, imperishable, eternal — on the part of every citizen of the United States. That feeling of gratitude should now prompt Americans of all classes to see to it that the bereaved and orphaned and maimed and destitute of the heroic French people shall not suffer or be allowed to want whilst we are enjoying the abundance of the blessed country which French valor and sacrifice did so much to render free and independent.

The celebration of the anniversary of Lafayette's birth on September 6th should be availed of as a fitting occasion to show the French people and the world that history shall not inscribe on its rolls that the Americans of the present generation failed in the gratitude to which Washington pledged Americans for all time and that France in her affliction did not appeal to us in vain. Better and nobler still will it be if no appeal to us shall be necessary, but if inspired by the lofty spirit and example of disinterested friendship and self-sacrifice of Lafayette and his countrymen, we Americans rush unasked to the succor of the French. We should be proud to rejoice in the privilege of at last being able to return in some measure the great service so generously, heroically and unselfishly rendered to us a century and a third ago when we were poor, weak and friendless. Every American man, woman and child who contributes to the aid and relief of the French maimed, orphaned and destitute in these days of appalling

calamity and devastating war truly helps to repay part of the debt which we have long been under to a great, generous and noble people and have never discharged. It would, indeed, be writing a sublime and imperishable page in our own history if the present generation of Americans out of their plenty should now raise and apply to the relief of the French people in their suffering a fund comparatively commensurate with that which France so generously expended for us in our distress and need in the days of Washington and Lafayette.

## THE CALL OF PATRIOTISM<sup>1</sup>

AS the Continental Congress dissolved, with its great task accomplished, American independence secured by the gallant help of generous, heroic and self-sacrificing France, and a new National Government founded under the Federal Constitution, the members of the Congress solemnly declared for the inspiration of future generations of Americans: "Let it never be forgotten that the rights for which America contended are the rights of human nature." And now we, the descendants and heirs of that heroic generation, are about to follow their example and contend for the rights of human nature the world over — for the defense of civilization and liberty and the overthrow of the common enemy of mankind. No nation ever embarked upon a loftier mission or a nobler or holier war. The constantly recurring outrages against humanity, the unprovoked invasion and wanton devastation of peaceful Belgium, the brutal oppression, savage slaughter and enslaving of non-combatants, the unspeakable treatment of defenseless women and children at which history will shudder to the last generation, the callous and defiant flouting of treaties and international law, the deliberate murder of American citizens on the high seas, left our Nation no choice but that of war

<sup>1</sup> Remarks at a patriotic rally held at Glen Cove, Long Island, New York, on Sunday, April 15th, 1917

Submission to these conditions was unthinkable. We could remain neutral no longer, and we had to draw the sword.

Our enemies very much mistake the spirit of the American people if they imagine that that sword will ever be sheathed until signal and never-to-be forgotten retribution has been forced and vengeance wreaked for countless atrocities — until the rights of humanity have been vindicated — until complete and unconditional victory has crowned our efforts and sacrifices — until a lasting peace, the peace of international justice, has firmly and permanently reestablished Christian civilization and the rule of law — until the humblest American citizen can travel unmolested on every sea and in every clime. "I am an American citizen" must hereafter afford everywhere a protection and shield even greater than was afforded by the boast of old, *Civis Romanus sum!*

We have gathered here this Sunday afternoon solemnly and reverently to pledge all that we have and all that is in us, our lives and our fortunes, unreservedly, unqualifiedly and unitedly to the support of our Government and the great cause of humanity. Whatever other result our participation in the World War is destined to produce, it has already won us a reward and a blessing priceless to the Nation — in the evidence everywhere, as at this splendid gathering, of the enthusiastic unity and staunch, self-sacrificing patriotism of the American people. May that spirit of unity and patriotism persevere throughout all sacrifices and trials and through the purifying

fire of war in a holy cause. Let it fortify and uphold our President in his great responsibility.

Whilst we regret the stern necessity for this terrible war, we realize that war has no evil comparable in its effect on national character to that of craven submission to wrongs or the selfish postponement of moral to material interests. There is no national wealth so precious as self-sacrificing patriotism and the spirit of valor and fortitude which it engenders; there is no national prosperity comparable to the courage and heroism of its citizens and their readiness to fight for the right at any cost and at any sacrifice. Indeed, what profiteth it a nation to gain the wealth of the whole world if it is to lose its soul? And the soul of the American Nation is its spirit of patriotism—the spirit of 1776 and 1861—symbolized in the flag as truly as the Christian faith is symbolized in the Cross.

The eloquent and lofty declaration of war by our President has elevated the American Nation to a plane of moral grandeur such as it has never before attained, and has armed us with the strength and inspiration of the highest, the purest and the most unselfish motives. President Wilson has indeed exalted our country in this great crisis. His message will long endure as the most important and inspiring American state paper since the Civil War. God grant him the strength and the support needed to ensure victory and the triumph of right and justice. The response from every class must be an unqualified readiness to serve and to sacrifice to the bitter end. Let us acclaim with our daily prayers in his noble words —

To such a task we can dedicate our lives and our fortunes, everything that we are and everything that we have, with the pride of those who know that the day has come when America is privileged to spend her blood and her might for the principles that gave her birth and happiness and the peace that she has treasured.

God helping her, she can do no other

A splendid and memorable page was written in our history last Sunday by President Wilson, when, in his reply to the thanks and congratulations of the President of the French Republic, he referred to the fact that France stood shoulder to shoulder with us on American soil in our struggle for independence. His words recalled that historic scene on the battlefield of Yorktown the morning after the surrender of Cornwallis to the united French and American armies, when Washington pledged to the France of Lafayette, Rochambeau and de Grasse "the most unalterable gratitude" of Americans for the help that France had rendered us during our Revolutionary War, which alone made our independence possible. It is inspiring to contemplate that our own generation, one hundred and thirty-six years after Yorktown, is to return that service on the battlefields of Europe and on the seas, and is about to show on a glorious scale that the gratitude of Washington and his generation of Americans still survives and that his noble and heroic spirit still lives and inspires us. The first evidence of that living gratitude was furnished but a few days ago by the heroic young Texan who, serving in the ranks of the gallant Canadians, stormed Vimy Ridge with the Stars and Stripes

flying from his bayonet. How thrilled we all were to read this!

But we Americans are facing a stupendous task that will call for great sacrifice and for united effort. We are at war with the greatest military power in history, whose record shows that it will stop at nothing to accomplish its purposes of conquest, devastation and world dominion. However extensive or apparently inexhaustible our resources may be, their effective use will tax to the uttermost all the talents, all the statesmanship and all the political sagacity of the country. War has always been the severest test of democracy. The transcendent importance of efficiency must be realized, and efficiency cannot be secured except through competent and trained experts directing the efforts of the Nation and thoroughly and carefully weighing and studying every plan, and through full cooperation on the part of every American citizen — of every man, woman and child throughout the country. This meeting has been called for the purpose of securing that cooperation so far as lies in the power of the citizenship of Glen Cove.

We must appreciate first of all the necessity for concentration upon what can be done by each of us according to his or her capacity and opportunity. Let us dedicate ourselves to the task of public service from now to the end of the war. All can help. Only a few can lead, only a few can do the dramatic things; most of us must serve and follow in the ranks although we may feel that we are qualified for higher things. Those who cannot fight can nevertheless contribute their share by

increasing food supplies, by economizing, by cutting down living expenses and eliminating luxuries, by multiplying the output of the workshop and the products of the soil, in a word, by conserving and augmenting the capital of the country. We must avoid scattering our resources in extravagant, wasteful, visionary, fruitless plans and enterprises. We must not lose our heads or permit the situation to serve as an excuse for exploiting all sorts of schemes and activities ranging from mere freakishness to absolute mischief.

I shall endeavor to point out the essential and elemental needs at this crisis in the life of our beloved country, and to show how every one in Glen Cove, rich and poor, young and old, can do his or her part in helping to assure victory, to relieve the suffering and hunger of our heroic allies, and to refute the taunt of our enemies that prosperity, luxury, materialism, greed and indolence have undermined the hardy national spirit and patriotism of Americans

First of all, our young men everywhere must at once volunteer, secondly, we must all retrench and curtail our luxuries and amusements and conserve and economize our food supplies, and thirdly, we must all help to increase the output of every workshop, of every industry, of every farm; of every garden, of every tillable inch of soil.

As to volunteering for the Army and the Navy. the response to the call for enlistments has been most disappointing all over the country, and this is true of Glen Cove as elsewhere. Our young men, with a few glorious exceptions, have hung back, and



are acting as if they deserved the reproach of belonging to a generation of slackers and cowards

I asked Postmaster Neafsey, the United States recruiting officer in our neighborhood, how many boys in this prosperous city of ten thousand inhabitants had enlisted since the declaration of war, so far as he knew or his records showed. The young men who are present to-day should note and ponder his answer, and then decide how long they will deliberately allow such a condition to continue as is shown by the record of the Glen Cove recruiting station.

The record to this hour is: one man has enlisted for the Navy, James Halpin, and one has enlisted for the Army, Samuel G. Matthews! Five colored citizens — Joseph Lynch, Samuel A. Jones, Adolphus Woddton, Howell Hicks and George Fowler — have enrolled and offered, and still offer, their services to their country, but Postmaster Neafsey has had to say to them practically that they are not wanted, as all the negro regiments are complete, and that the Government, so far as he knows, does not intend to increase the number of negro regiments. I think there must be a mistake. I hope such folly and injustice will not be recorded. The courage and heroism of our colored soldiers in the Civil War and in the Spanish-American War — in Cuba and the Philippine Islands — their immortal valor at San Juan Hill, surely entitle them to share with us in the defense of the common country and the common flag, and to equal honors and opportunity for service and sacrifice!

To this patriotic service roll of Glen Cove should

be added the names of six other Glen Cove residents who have volunteered in other ways than through our local recruiting station. They are Junius S. Morgan, who has enlisted in the Naval Reserve, and has worked day and night for eighteen months in order to prepare himself for service in case of war, the two Davison brothers, who have volunteered for the Aerial Coast Patrol, one of the most dangerous and important of all branches, and have devoted nearly a year to intensive preparation for this extra hazardous service; John Butler, who has enlisted in the famous Sixty-ninth Regiment; Alfred Howe, who has enlisted in the Coast Artillery, and Ted Storer, who has enlisted in the Aviation Corps.

All honor and all glory to these men! Their names should long head the Honor List of Glen Cove!

There are probably others in our neighborhood of whom we have as yet no record. But we want to know of them so as to be able to enroll their names, and we want every name we can add to the list, that the good repute of Glen Cove for patriotism may be speedily redeemed.

Remember, all of you young men, that during the Civil War, Glen Cove, having then a population of only 2,500, sent fully 250 men to fight for the Union: a proud and immortal record indeed. Let the young men of to-day emulate that noble example.

On Friday I asked a strapping, healthy youth of eighteen why he did not enlist. His answer was that he wanted to, but that his mother would not

let him! Is that the spirit of the American mothers of Glen Cove?

Mothers and fathers of Glen Cove, your country is at war, the future liberty and happiness of America and humanity — the preservation of civilization — all the ideals that you have taught your children to cherish — all that you have told them free America stands for — all that the Star Spangled Banner represents — all that makes life worth while — all that is worth living for and worth dying for are at stake. Are you going to hold your boys back? Do you want them to be known for the rest of your lives and their lives as shirking cowards?

Boys of Glen Cove, rally, rally round the dear old flag! Do not let the greatest of all honors pass by you — the priceless and imperishable prestige — the eternal glory of having served your country as a volunteer! As long as your generation of Americans lasts, as long as the memory of your generation endures, high on the roll of honor and of national gratitude in every American community, whenever and wherever Americans hereafter congregate, will be the names, the applauded and cherished names, of those who volunteered in April, 1917! It will be the badge and mark of patriotic distinction for all time. Let the presence of the survivors of the noble volunteers of 1861 who sit upon this platform, revered by every one, inspire you. Don't wait for conscription. Don't wait for the draft and compulsion. Don't throw away the prestige of having been a volunteer in this righteous war. Don't let it be pub-

lished in every country of the world—in the trenches—in the camps of friends and enemies—in the remotest corners of the earth, that the Americans of your generation were slackers and would not enlist, that they were willing to let others fight and die for them, and that they had to be conscripted.

Fellow citizens, the second duty to which I would call your attention is that of economy and the conservation of our resources. Every ounce of food and other supplies conserved and every penny saved will hasten the desired end and help directly to assure victory.

It is high time for us Americans to economize. We are at once the wealthiest and the most thriftless, prodigal and wasteful people in the world. We are squandering recklessly upon appetite, luxury, amusement and vice the food and money that would pay for this war and save millions of fellow-beings from misery and starvation. May I give you a few of the astounding figures of waste?

Do you realize that the American people daily spend more for beer than for bread—more for drink than for meat—more for tobacco than for clothing—more for automobiles than for education and religion?

Do you realize that the American people have been spending more than \$7,000,000 a day for drink alone, enough to feed and nourish for a whole year 200,000 starving orphaned children in Europe—\$2,000,000 a day for tobacco—\$1,000,000 a day for candy and confectionery—\$200,000 a day for chewing gum?

One cent a day of economy for each inhabitant of the United States will mean a daily saving of \$1,000,000 to help the Government and relieve the suffering in Europe! Five cents a day of economy will mean a daily saving of \$5,000,000!

In the face of these startling figures, ought we not to insist upon economy? Ought we not each of us to resolve here and now to do his or her share toward conserving the resources of the Nation? Ought we not to curtail in some way? Ought we not to save some of the resources we have been wasting?

In these days of plentiful work with good pay, there is not a family in Glen Cove that cannot economize by denying itself something, however small.

Every luxury or extravagance dispensed with — every amusement or dissipation stopped or suspended — every appetite checked — every penny saved and deposited in the bank will be a direct contribution, a direct help, a direct service to the Government and to the cause of humanity. The recompense will be an hundred-fold in the spiritual exaltation flowing from such a course of self-restraint and sacrifice and in the immense inward satisfaction of service to our country and humanity.

The third cardinal duty, and in importance equal to the others, is that each of us shall determine to do something each day that will tend to increase the output of every trade and calling and the yield of every foot of tillable soil. Workmen should speed up, and they will thereby increase the Nation's resources. Every one here should labor

in some garden or field, if necessary after the ordinary day's work is done. There is plenty of land. Every landowner in this neighborhood who cannot till his available land will gladly let his land free of charge to anyone willing to work it. There is hardly a man, woman, or child in this community, rich or poor, who cannot grow some kind of foodstuff this summer. Each potato raised, each extra vegetable produced, aye, each additional blade of grass will help increase the food supply which is so vitally necessary to Europe and for which millions of our fellow human beings are turning their eyes and outstretched arms imploringly and hopefully to America. Shall we fail or refuse to respond?

Wake up, Glen Cove! Stand up, Americans, and be counted as doing! Let every man, woman and child in this audience in kneeling tonight to the Ever-living God, who has been so kind to America, who has blessed us beyond the common allotment of Providence to man — let us all reverently vow to help by economizing and by doing some form of service and self-sacrifice every day so long as this awful war shall continue and so long as the oppressed and starving of Europe shall look to us as their only hope of relief.

In conclusion, I want to recall to your minds the inspiring and patriotic poem of Longfellow, "The Building of the Ship," which we learned as children, and the reading of which during the dark days of the Civil War was always greeted with passionate enthusiasm. History tells us that Lincoln loved to read it and could never hear it

recited without tears. The soul of a nation is ever to be found in its poetry. I venture to say to you in all reverence that you should read that inspired poem tonight as you would your Bible, for verily it contains the true gospel of the loftiest American patriotism and devotion to this great government, the people's own government. Let me read to you part of the last stanza of the noble poem that so often thrilled your fathers.

Thou, too, sail on, O Ship of State!  
Sail on, O Union, strong and great!  
Humanity with all its fears,  
With all the hopes of future years,  
Is hanging breathless on thy fate!

In spite of rock and tempest's roar,  
In spite of false lights on the shore,  
Sail on, nor fear to breast the sea!  
Our hearts, our hopes, are all with thee,  
Our hearts, our hopes, our prayers, our tears,  
Our faith triumphant o'er our fears,  
Are all with thee, — are all with thee!

## WELCOME OF THE NEW YORK BAR TO RENÉ VIVIANI

DELEGATE OF THE FRENCH GOVERNMENT TO AMERICA,  
VICE-PRESIDENT OF THE FRENCH COUNCIL OF STATE,  
MINISTER OF JUSTICE, ETC.<sup>1</sup>

LE BARREAU DE NEW YORK, au nom duquel j'ai l'honneur de vous souhaiter la plus cordiale bienvenue, a compris que les sentiments d'hospitalité et de confraternité professionnelle qui l'animent envers un avocat et un homme d'état français aussi célèbre et aussi éloquent ne sauraient être mieux exprimés qu'en votre belle et poétique langue. Mais aucun de nous n'aurait la témérité d'essayer de vous traduire en français notre sympathie ardente si nous ne concevions qu'en face de la guerre féroce et brutale qui désole la France et qui remplit nos coeurs de tristesse, même au moment de ce banquet, vous et vos collègues n'entendrez que les battements de nos coeurs, et que vous ne vous arrêterez pas au mode de leur expression.

Après les acclamations et les discours que l'on vous adresse depuis votre arrivée aux États-Unis, vous ne sauriez douter de l'existence d'une amitié profonde et unique chez le peuple américain pour le peuple français. Cette amitié est bien vieille. Elle n'est pas l'effet de cette guerre terrible qui,

<sup>1</sup> Remarks at a luncheon given by the Bar of the City of New York in honor of M. Viviani on May 11th, 1917



depuis presque trois ans, bouleverse le monde entier, ni de la sympathie engendrée par l'héroïsme et les souffrances de vos compatriotes et les atrocités de vos ennemis. Elle date de notre naissance comme nation indépendante, et provient d'une reconnaissance impérissable. Elle a été créée par les services, les sacrifices, et la générosité de la France de Lafayette, de Rochambeau, de de Grasse, et de Louis XVI. Gravée dans nos coeurs inaltérablement est la gratitude éternelle que Washington voua à la France le lendemain de la Bataille de Yorktown. La France recueille au vingtième siècle ce que Lafayette et ses compagnons semèrent si glorieusement au dix-huitième.

Nous reconnaissons aussi notre dette envers l'esprit français dont nous trouvons partout l'empreinte dans notre idéal, notre littérature, notre art, nos institutions, nos églises, nos principes de droit et de justice. On ne pourrait exagérer en disant combien les idées françaises ont façonné et enrichi les idées américaines, et combien l'âme française a contribué à former l'âme américaine.

Votre trop courte visite, Monsieur le Président, et l'impatience que mes confrères ont de vous écouter nous forcent à remettre à une autre occasion la considération des origines françaises de beaucoup de nos principes de jurisprudence et de politique. Il serait particulièrement intéressant de faire remonter à la France notre conception constitutionnelle qui élève les lois fondamentales et les droits de l'homme au-dessus de tout pouvoir gouvernemental, soit d'un roi, soit des représentants du peuple, et de retrouver dans les Parlements

de France sous l'Ancien Régime les prototypes de notre Cour Suprême à qui appartient le droit de déclarer nul — de refuser d'enregistrer — tout acte du pouvoir exécutif ou législatif qui violerait nos lois fondamentales. Un grand Français, Montesquieu, fut l'oracle des fondateurs de notre gouvernement et des auteurs de notre constitution nationale, et ses successeurs, les juristes et les publicistes français de génération en génération, ont continué à nous inspirer de leurs principes de droit public et constitutionnel.

Il faut aussi remettre à des temps moins tragiques nos hommages au barreau français, à cette renommée noblesse de robe, qui, après la conquête de l'Angleterre par les Normands, instruisit nos aïeux dans les principes du droit et dans l'art de la plaidoirie, et qui a fourni les plus beaux exemples de l'éloquence juridique. L'éloge de d'Aguesseau est toujours juste, que l'ordre des avocats français est "aussi ancien que la magistrature, aussi noble que la vertu, aussi nécessaire que la justice."

Nous ne pouvons nous abstenir de vous dire un mot de condoléance pour les avocats français, vos confrères, qui pendant cette guerre ont donné leur vie pour la France, pour la civilisation, et pour l'humanité. Nous voudrions nous associer du fond du coeur à vos deuils, et saluer vos héros qui sont tombés au champ d'honneur pour assurer le triomphe du droit. La liste des récompenses militaires et des sacrifices des membres du barreau français est bien longue et bien resplendissante. Ces avocats, comme on l'a déjà si bien dit, ont écrit de leur sang

une page de l'histoire de France auprès de laquelle pâleront tous les recueils de plaidoiries. L'encens de la Messe Rouge célébrée en mémoire d'eux à la Sainte Chapelle, et à laquelle assistait l'illustre Président de la République Française — l'encens de cette Messe Rouge a traversé l'océan pour venir nous manifester à nous l'union sacrée des partis et des sectes, dont vous nous avez parlé si éloquemment — la sainte union qui a rendu la France invincible, et qui sera l'espoir et le soutien de la paix réparatrice et régénératrice.

Mais l'héroïsme que nous acclamons dans l'avocat français caractérise également toutes les classes du peuple français: le laïque comme le prêtre, l'artisan comme l'homme des professions libérales, le paysan comme le bourgeois, le pauvre comme le riche, les vieillards, les femmes et les enfants comme les soldats héroïques. De tous côtés nous entendons le même cri d'amour pour la patrie, nous découvrons la même volonté de sacrifice, nous sentons la même foi dans les destinées éternelles de la France.

Au début de la guerre, Monsieur le Président, vous avez proclamé dans votre grand et noble discours du 4 Août, 1914, qui a fait frémir le monde entier d'indignation et l'a fait bondir de sympathie, que la France étant sans reproche serait sans peur devant une attaque qui violait toutes les lois de l'équité et toutes les règles du droit humain. Et aujourd'hui vous pouvez ajouter fièrement — avec un suprême orgueil — qu'elle a été vraiment sublime et audessus de tout éloge.

Nous cherchons en vain les mots qu'il faudrait

pour exprimer l'admiration des Américains pour vos soldats héroïques, pour les vainqueurs de la Marne, de l'Yser, de Verdun, de la Somme, de l'Aisne, et aussi pour tout ce peuple vaillant de l'arrière qui est digne de vos soldats. Nos coeurs se serrent et nos voix se brisent devant la multitude des scènes héroïques, des sacrifices épouvantables et des tableaux atroces. Nous ne pouvons que nous mettre à genoux devant les tombeaux de vos morts, et les remercier de nous avoir montré que l'homme peut être si courageux, si noble, si sublime, l'humanité si belle. Il fallait, hélas, cette épreuve tragique pour prouver de nouveau au monde la vraie grandeur et toute la noblesse de l'âme française — de cette élite de la civilisation chrétienne.

Mais vos morts de la guerre vivent, et ils vivront tant que durera la mémoire de la France. De telles morts sont nées les inspirations qui ne meurent point. Nous reconnaissons que vos fils sont morts non seulement pour vous de France, mais aussi pour nous d'Amérique. Vos morts sont maintenant *nos morts*; et ils nous appellent. Les descendants de la France de Lafayette, leur territoire envahi et souillé par les barbares, ont le droit d'appeler à leur secours les descendants de l'Amérique de Washington. La réponse à cet appel a été donnée par notre Président dans sa noble et incomparable déclaration de guerre, et elle s'est répercutée dans les acclamations spontanées et enthousiastes du peuple américain. Nous sommes enfin à vos côtés, et nous y resterons jusqu'à ce que la victoire couronne glorieusement le renouvellement de l'Alliance Franco-Américaine de 1778.

Vous pouvez retourner, cher et illustre Maître, proclamer à vos soldats, à vos femmes, à vos vieillards, et à vos enfants, que la grande république soeur a entendu l'appel de vos morts, qu'elle s'est engagée à tous les sacrifices pour secourir les Français — pour garantir la sécurité de l'avenir à la France, à la démocratie, à la civilisation, à l'humanité toute entière, et qu'elle vous a répété ce que Rochambeau avait écrit au Président du Congrès Continental il y a cent trente six ans: "Entre eux et nous, à la vie, à la mort."

Messieurs du barreau de New York, en votre nom je lève mon verre en l'honneur de notre alliée vaillante et noble, la République Française, de son Président illustre, et de son représentant éminent, le grand juriste français qui nous honore aujourd'hui de sa présence

## FRANCE DAY <sup>1</sup>

IT was truly a noble inspiration that prompted the Governor and Legislature of the State of New York to dedicate April 26th to France and to call upon the citizens of the Empire State to commemorate on that day all that our forefathers owed to the French people and all that French ideals have meant to the life, soul and aspirations of America. We are going from here to the statue of Lafayette in Union Square to lay our wreath at his feet, and on behalf of the France-America Society reverently and gratefully to salute his memory and join with other American patriotic societies in paying a loyal and loving tribute to France. We shall find there the wreaths of the New York Society of the Order of the Cincinnati, the Daughters of the Cincinnati, the Military Order of the Loyal Legion, the Lafayette Post of the Grand Army of the Republic, the French Academy of Arts and Letters, the National Institute of Arts and Letters, the American Academy of Arts and Letters, the Society of Beaux-Arts Architects and many others. This poetic demonstration is indeed creditable to our city.

How inspiring and eloquent the evidence, in these beautiful wreaths decorated with the tricolor

<sup>1</sup> Remarks at the public meeting held at New York City on April 26th, 1917

of France and America, that the descendants of Lafayette's comrades in arms are still inspired by the love and gratitude of Americans towards France! How inspiring and eloquent the fact that the Order of the Cincinnati, the Military Order of the Loyal Legion and the Grand Army of the Republic have sent their wreaths and tributes of affection! If the immortal soul of Lafayette is conscious of what we are doing here to-day in his memory and in honor of his beloved France, immense must be his gratification to realize that his services and sacrifices in the cause of American independence cemented the enduring ties between the two nations, and that "the most unalterable gratitude" to which Washington pledged Americans for all time the morning after the surrender of Cornwallis at Yorktown, has survived, undiminished and unweakened

A splendid and memorable page in our history was written when, in his reply to the thanks and congratulations of President Poincaré upon our joining the Allies, President Wilson referred to the fact that France had stood shoulder to shoulder with us in our struggle for independence.

No American would minimize our great debt to France or question that it was the aid of French soldiers and sailors under Lafayette, Rochambeau and de Grasse that made American independence possible. Now, one hundred and thirty-six years after Yorktown, we are to stand shoulder to shoulder with France in her great struggle for humanity and civilization and for the same lofty and inspiring ideals of liberty and the inalienable

rights of men for which the France of Lafayette sacrificed so much in our time of need.

By his eloquent message of April 2d, President Wilson placed our participation in this awful but purifying and ennobling war upon the highest, the purest, the most unselfish grounds, when he pledged us to an altruism of which the history of wars furnishes no parallel, or furnishes a parallel only in the Franco-American Treaty of 1778. The statesmen of the eighteenth century looked upon France's participation in the American Revolution as prompted by idealism, as "a glaring instance of Quixotism," to quote the language of the then Prime Minister of Spain, and as an improvident sacrifice of the permanent material interests of France. Yet who will doubt that the fruits and benefits of the quixotism and altruism of the France of Lafayette have been infinitely greater and more enduring than anything else done by France in the eighteenth century? Indeed, is it not true, is it not more than ever evident to-day that the tender of Lafayette's life and fortune to the American cause and the unselfish service of himself and his comrades contributed more to the true grandeur and true wealth of France in undying deeds and imperishable memories than even the victories of Napoleon? The effects of Napoleon's military triumphs have long since been swept away, but the effects of Lafayette's example and the gratitude his services engendered are eternal. In Lafayette was personified the noblest and purest of French national motives, and he was the very incarnation of the French spirit of idealism and



unselfish service and sacrifice for humanity, which are the glorious heritage and the true glory and inspiration of the France of to-day.

We Americans acclaim the dauntless and indomitable patriotism of the French people after thirty-three months of awful war and their heroic determination to endure and sacrifice to the bitter end, and we pledge them all that is in us in defense of our common ideals and aspirations. May their heroic example inspire and fortify us.

Long live France! Long live the memory of Lafayette! Long live the two great sister republics, united forever in ideals and allies once more for the defense of humanity, democracy and liberty!

## JOSEPH HODGES CHOATE <sup>1</sup>

IT is only a week since we joined reverently and sadly in the nation's homage to the earthly remains of the most brilliant and the most venerated member of The Union League Club of New York. Our bereavement is still too fresh and overwhelming and too many memories crowd upon our minds to permit us to compose our thoughts and find words fitting to voice what we all deeply feel or to express our appreciation of a truly great personality, who was the noblest and sweetest character of our day and whom we are grateful to have known and loved

Mr Choate was so versatile and his interests were so numerous that the many groups of friends and associates with whom he coöperated naturally feel that to each group belongs as its own special heritage some particular phase of his glorious and beneficent career.

He was the ideal and the most brilliant ornament of the American Bar, and his splendid talents and unblemished honor were its pride and inspiration. To the Bar, therefore, should be left the memorial of his services and fame as an advocate and jurist. The due appreciation of his broad and varied culture, of his taste in literature, of his love of nature, of his interest in science and art, rests peculiarly

<sup>1</sup> Remarks at a meeting of The Union League Club of New York held in memory of Mr Choate on Thursday evening, May 24th, 1917

with the universities, museums and academies to whose work he devoted so much time and thought and to which he was always ready to give his best. The tribute to his philanthropy and his manifold services and sacrifices in the field of charity should be entrusted to those who witnessed his innumerable acts of generosity and actively shared his profound sympathy for the unfortunate. The many who had the good fortune — I should say the priceless privilege and blessing — of enjoying his friendship cannot yet attempt to describe the charm of his pure and noble character and the affectionate devotion which he inspired

But the aspect of Mr. Choate's life and service which we of The Union League Club may well claim as our own sphere was his militant patriotism. He profoundly believed in the patriotic mission of this club, and for half a century it was very close to his heart. He passionately loved this country of ours, its ideals, its institutions, its liberty regulated by just restraints, its equality before the law, its guaranties of the fundamental rights of free men. To him the Constitution was our Ark of the Covenant. He was never more ardent or more eloquent than when defending the Constitution and contending for the constitutional rights of the individual. Often have those who were privileged to discuss with him the subject of patriotism been thrilled and uplifted by his supreme confidence that the National Constitution would endure and that the Union and the government established by it "shall not perish from the earth."

Throughout his career Mr. Choate believed that

the primary duty of the profession is to the State, and that the greatest and grandest service that an advocate can ever be called upon to perform is in relation to questions of public or constitutional law, as an expert instrumentality especially charged with the duty of conserving and promoting the well-being of our governments, national and local. The interests of the individual client in any particular litigation involving a question of public law were to him secondary to the interests of the commonwealth. In this respect, he adopted in his professional conduct the principle of the Romans, that the constant and first duty of the advocate is always to the Republic. As often quoted by Mr. Choate, "*pro clientibus saepe; pro lege, pro republica semper.*"

Any attempt to chronicle the public movements in which Mr. Choate engaged and to which he devoted so much of his best thought and effort would require a review of the history of our country since 1856. He came to New York in 1855, at the age of twenty-three, and the next year he was prominent in support of Fremont as the first Republican candidate for the office of President of the United States. From 1856, practically every political campaign saw him in the foreground advocating the sound and patriotic principles of the Republican Party. Indeed, with his convictions, he could not have been other than a Republican. His conspicuous services in 1871 and 1872 as one of the fearless and eloquent champions of the Committee of Seventy in its campaign against the Tweed Ring, led to his election as president of

this club in 1873, when he was only forty-one years of age. And year after year he was always, as you will readily recall, among the leaders in its patriotic activities.

Three outstanding public services rendered by Mr. Choate call for particular mention. The first public office he held was that of president of the Constitutional Convention of the State of New York in 1894, when he guided the deliberations of that body in framing the Constitution by virtue of which we are still governed. His second public office was as Ambassador to the Court of St. James's, where he did more than probably any of his predecessors in that important post to bring the two peoples closer together, to inspire at once respect and admiration for American ideals and institutions and American culture, and to show how fine an advocate, scholar and gentleman the new world could produce. A third conspicuously valuable and fruitful public service was rendered by Mr. Choate at the Second Hague Conference, where he placed the United States in the position of leadership in the advocacy of sound principles of international relations.

Moreover, Mr. Choate during his whole professional career constantly rendered inestimable and enduring public service in the argument of cases involving important and far-reaching questions of public and constitutional law. It was in such arguments that he was seen at his best, even in comparison with his superlative talents before a jury. He did not enjoy, it is true, the great and exceptional forensic opportunities that fell to the

lot of his illustrious partner, Mr. Evarts, who defended a President of the United States before the High Court of Impeachment, represented the Nation before the Geneva Arbitration Tribunal, and succeeded in establishing the title of Mr. Hayes to the Presidency before the Electoral Commission. Such opportunities for service and eloquence, however, have fallen to the lot of few advocates. Nevertheless, any one who will examine the many cases involving constitutional law which were argued by Mr Choate will be amazed to find how varied and extensive were his services in this particular branch of our jurisprudence. He profoundly believed and constantly urged that the defense of Constitutional Government and of the rights of the individual is the special and patriotic duty of the profession, and that the American Constitutional System would not long endure or the fundamental rights of the individual long continue to be of practical value if the Bar of the country should become lukewarm in the performance of the duty of upholding those rights and maintaining the essential principles of civil liberty and political justice.

The greatest public lesson taught by Mr Choate's life and the greatest inspiration from his example will undoubtedly be found in his deep-rooted patriotism. Indeed, the larger significance of this impressive gathering tonight lies not merely in its manifestation of admiration, friendship and love for Mr. Choate, but rather in the evidence it affords of our deep conviction that he more than any other on our rolls personified the disinterested

love of country from which sprang this great patriotic organization, the absolute and unqualified loyalty to the National Government to which its charter expressly dedicates it, and the unalterable and uncompromising determination to uphold and maintain American Constitutional Government to which it is committed. Mr. Choate was the very incarnation of these convictions and these purposes.

To a highly cultivated, a reflecting, an imaginative mind, the writing of the biography of Mr. Choate should be a most inviting and fascinating task. It would carry the mind backwards eighty-five years to the Salem of 1832, and the close of the first administration of Andrew Jackson, when Webster and Clay and Calhoun were in their prime, and then through the most eventful and fateful years of our national history. It would likewise carry the mind backwards to the England of William IV, to the France of Louis Philippe, to the Prussia of Frederick William III. The biographer would, however, have to record that the last three years were in Mr. Choate's eyes the most important and interesting of his life, grandly demonstrating that to him age was "opportunity no less than youth itself." From the beginning of the awful war which now devastates Europe and which shattered so many of his hopes, he realized before any one else that the Allies were defending our ideals of democracy, and in truth fighting, suffering, and sacrificing for us. Day after day, night after night, he strove with spiritual fervor and eloquence undimmed by age to awaken his country-

men and make them recognize their own danger and their moral obligations to humanity.

The last six weeks of his life were replete with happiness and contentment. The glorious end, indeed, crowned the work of a lifetime of patriotic service. President Wilson's lofty and immortal message of April 2d filled him with gratitude and joy, and he declared that he had never before felt so proud and happy, for the Nation had been placed upon the highest plane it had ever attained, and at last he saw the realization of his dream of the unity and solidarity of the Anglo-Saxon race in the defense of democracy and humanity and of a common civilization. The momentous events that followed the declaration of war by Congress were an immense comfort to him. He was intensely proud of the disinterested, altruistic pledge by our President of everything that we are and that we have in defense of the principles that gave our Nation birth. He was intensely proud, exultingly proud, when America handed hundreds of millions of dollars to Great Britain and France to relieve their wants and distress. He was entitled to be proud: for, in truth, Mr. Choate's spirit was much of the inspiration of the thrilling events in American history which occurred during this period. And finally his last week on earth was indescribably happy, for he was able to extend to the English and French Commissions the greetings of his home city and the cordial and enthusiastic hospitality of the great and loyal community which he had served so long and so devotedly and which he honored so highly!



Mr President, if in coming years we are asked to point the moral of Mr. Choate's life, to declare in what particular quality he was preëminent, what was the richest of the legacies he left us, what made him the noble and lofty figure and extraordinary personality that he was, even more than his perfect courage, — in a word, what is to us the highest glory of such a life, shall we not answer that it was his *character*? The moral value to this community and to the whole Nation of such a character is verily beyond all computation

In October, 1898, I had the honor to attend, as Mr. Choate's guest, the unveiling of the statue of Rufus Choate in the Court House at Boston. While Mr Choate was delivering his memorial oration, I felt and ever since have believed that in describing the high principles and moral standards that had animated and guided the life of his illustrious kinsman, he was proclaiming those which dominated and controlled his own life. May I repeat to you what he then said of Rufus Choate?

"And first, and far above his splendid talents and his triumphant eloquence, I would place the character of the man — pure, honest, delivered absolutely from all the temptations of sordid and mercenary things, aspiring daily to what was higher and better, loathing all that was vulgar and of low repute, simple as a child, and tender and sympathetic as a woman. Emerson, most truly says that character is far above intellect, and this man's character surpassed even his exalted intellect, and, controlling all his great endowments, made the consummate beauty of his life." And Mr.

Choate then added — “The first requisite of all true renown in our noble profession — renown not for a day or a life only, but for generations — is Character ”

Is it not true that these words apply even more truly to the great and noble man for whom we are mourning tonight, and that they might well be written as his epitaph?

Two evenings before the end, Mr Choate, having invited to his house a few friends to meet Mr. Balfour, after dinner broached to some of his guests the subject of the immortality of the soul. Those who had the privilege of hearing that discussion must always regard the event as memorable and far more serious and significant than they then imagined. Perhaps his lofty soul had a solemn premonition of the coming summons to enjoy the supreme reward of his staunch faith in the God of his fathers, and that he then felt, contentedly and serenely, that he would soon

sustained and soothed

By an unfaltering trust, approach [his] grave  
Like one who wraps the drapery of his couch  
About him, and lies down to pleasant dreams.

TO THE GRADUATING CLASS OF  
FORDHAM UNIVERSITY, 1917<sup>1</sup>

THE members of the classes of 1917 at our educational institutions are being graduated in the midst of the greatest crisis in history since the overthrow of the Roman Empire. How solemn and awe-inspiring is their prospect! The issue confronting the world is again between civilization and barbarism — between conscience and brutalism. Never before has so much been at stake materially and spiritually, never before have men's souls been tried as they have been and will be tried in this war; never before have the services and leadership of educated and disciplined men and women been so essential. Modern civilization must be saved from the domination of conscienceless and merciless militarism. The hope of accomplishing this result now clearly rests upon the efforts, the services and the sacrifices of the American people. It seems, indeed, that America's heroic day has come, when she is to find her fuller and broader and nobler life and fulfill her highest mission. If Americans are now found wanting in the stupendous task and patriotic duty ahead of them, mankind may have to suffer centuries of misery equal to what are known to us as the Dark Ages

There can be no greater error than to imagine

<sup>1</sup> Remarks addressed to the Graduating Class at the seventy-second commencement of Fordham University, June 13th, 1917.

that there is some law of constant human progress which tends inevitably to make men more humane and more moral as the world grows older and as education spreads knowledge. The history of Europe, of Africa and of Asia surely teaches us that there is no such law, and that barbarism and militarism may plunge into abject misery and ignorance the most opulent and enlightened of peoples and convert into desert wastes the most fertile spots of the earth.

We should bear in mind that the advanced stage of progress and civilization attained by the Romans was completely overthrown by barbarians, and that the peace and prosperity that then reigned under just and equal laws, the literature and arts that flourished, the splendid system of jurisprudence that had been developed, the growth of the moral instinct that was beginning to soften manners and uplift and dignify manhood, were all submerged in the triumph of brute force. We should likewise bear in mind that a thousand years of desolation, misery and darkness followed the fall of Rome, and that the renaissance of manners, literature, arts and jurisprudence which has produced our modern civilization, dates only from the fifteenth century. Nor should we fail to realize and ponder that conscienceless science and soulless, materialistic education have become the accomplices of modern barbarism and have rendered it infinitely more destructive, inhuman and merciless than anything recorded of the barbarians of the days of Attila.

It is of paramount importance that the Ameri-

can people should appreciate the real issue that is being fought out on the battlefields of Europe and on the high seas — what is really at stake in defense of which our President has nobly pledged all that we are and all that we have — and what would be the stupendous and ruinous consequences of failure and defeat. Especially important is it that the educated young men who are now being graduated from our colleges and universities and who are about to dedicate themselves to patriotic service and sacrifice and offer to their country and to humanity “the last full measure of devotion,” should thoroughly understand why we and our allies must be prepared to make sacrifices of blood and treasure unparalleled in history to assure the final triumph of the right and the future security of our civilization.

Nothing could be more dangerous or more likely to undermine the spirit and stamina and to chill the enthusiasm of the country than to permit any doubt to prevail as to the causes of our participation in this war. We must banish all catch phrases and euphemisms, which, under the magic of eloquence, tend to blind and mislead many and to do infinite mischief when taken apart from their context, and which sooner or later will come back to plague us. We have not plunged into this frightful struggle in support of any political propaganda or abstract theories. We have not gone to war in order to force democracy upon other peoples, for we recognize the right of other peoples to choose their own form of government. We are not at war with autocracy as a form of government, but with

manifestations of its results. If a dictatorship must be established in Russia tomorrow in order to save her from anarchy and misery, we shall continue to coöperate with her as an ally; and the overthrow of autocracy in Germany would not change the issue at all so long as the German people were bent upon conquest and domination and approved, as they now do, the barbarous methods and merciless atrocities of their military forces.

We have drawn the sword to avenge wrongs to which no self-respecting nation could submit, and because hundreds of American citizens — defenseless men, women and children, entitled to the full protection of the American flag — have been barbarously and defiantly murdered on the high seas — because our national honor, duty and self-respect compel us to punish the offenders so that no nation, however powerful, shall hereafter dare to take the life of an American — because the army which attacked and brutally devastated peaceful Belgium would constitute a menace to us if it triumphed and went unpunished in Europe. We are now at war because the barbarians who have deliberately and mercilessly ruined everything in their march, even more completely than the savage Huns of old, who have ruthlessly slaughtered defenseless non-combatants, who have wantonly destroyed private property and desecrated and ruined the cathedrals and churches of Belgium and France, who have murdered unoffending priests and outraged holy nuns, have made Europe and the world at large unsafe for Americans as well as for all other civilized peoples. It is primarily to

make the world safe for Americans that we are now at war. We have determined to put an end to the danger of our own people being subjected to the unspeakable atrocities of German barbarism. We are fighting and sacrificing for the maintenance of civilized life according to our American ideals. We have joined the Allies in order to compel the observance of those rules of international law and of the laws of war which recognize the rights of neutrals and of weak and defenseless non-combatants, because we deem these rules and these laws vital to the future safety and happiness of our own people and vital to our own independence and welfare as a nation.

Whilst we are thus engaged in the war to redress our own wrongs and to protect the vital interests of Americans, we are also fighting and sacrificing for the still higher purpose of suppressing barbarism once for all time the world over and of perpetuating those standards of civilization and humanity which we cherish and want to see prevail in the community of nations.

On this occasion, when so many students of a great Catholic University are about to step forward for patriotic service and sacrifice, it is fitting and proper to refer, although in a manner necessarily cursory and inadequate, to the great revival of religion in France and particularly among French Catholics. This is, perhaps, the most striking phenomenon of the war. It is true that this revival is also in evidence among French Protestants and Jews and in other countries, but as the great majority of the French people are Roman Catholics

and of Catholic tradition, I shall refer only to the members of our own faith.

The lesson cannot be learned nor its full significance and comfort appreciated unless we recall the hostility of the anti-clerical party in France for forty years towards religion and particularly towards the Catholic Church. Only a few years before the outbreak of the war, the most eloquent of French orators, then Minister of Labor, declared in the Chamber of Deputies that his party had devoted itself to the work of anti-clericalism and irreligion, that it would drive all religious faith from the consciences of men, that whenever anyone was found on his knees, he was lifted up and told that behind the clouds above us there were only chimeras and illusions, and that the lights of the heavens had been extinguished never to burn again. Yet, with the declaration of war and the realization of the awful peril and suffering of France, there came spontaneously the flaming anew of these eternal lights and of religious ardor amid the gratitude and acclamations of those who shortly before were deriding religion as mere superstition. In France to-day there is no longer any outcry against religion. On the contrary, the members of all political parties, the President of the French Republic, and the highest ministers of State are coöperating with the bishops and priests in order to render available for the defense of their beloved France the unconquerable and self-sacrificing spirit that is generated and sustained by religious faith. Indeed, perhaps some of you may have heard Monsieur Viviani, in his recent eloquent



speech at the City Hall in New York, pay a glowing tribute to the *Union Sacrée* in France, fortunately brought about as a result of the war, which has united all her religious sects and parties in defense of the *patrie* and made France invincible

To the atheists of France it may be true that in their vision the lights of the heavens seemed to be extinguished because they did not see them, but the faithful reflected that

. . . as the evening twilight fades away  
The sky is filled with stars, invisible by day.

And verily the sky of the true France, the France that we love and to whom we are bound by so many ties, was always filled with the stars of her flaming faith and unfaltering trust in the God of Battles, and we pray that their existence may never again be challenged because they may be invisible to those who are blind or without the blessing and inspiration of faith.

In the pending war, for the first time I believe in modern history, the clergy of all religious denominations in France have been compelled by the law of the Republic to bear arms and fight in the ranks. It had long been the sentiment of Christian countries that the vocation of the priesthood was incompatible with the bearing of arms by the clergy and the killing of their fellow-men, although many priests voluntarily served in all wars as chaplains, stretcher bearers, hospital attendants, orderlies and in many other ways involving frequently as much, if not more, real danger than that incurred by those who were actually engaged in the fighting.

It may be noted in passing that the recent act of Congress summoning the men of America to military service provides that ordained ministers of religion and even students preparing for the ministry shall be exempted from the selective draft.

The French Republic, however, long before the war determined that the clergy of all denominations should serve in the ranks and should undergo the regular military training prescribed by law for all men. The sacred principle of equality was said to require it. The cry was that every priest must carry a knapsack — *les curés sac au dos*. It was believed by many, although we Americans prefer now not to accept this view, that the measure was adopted not so much to increase the number of men in the French army as to weaken, if not destroy, the influence of the Catholic Church among the young men attending or being graduated from the seminaries. And many apprehended that two years of life in the barracks in contact with the irreligious, scoffing and vicious would tend to weaken or destroy the faith and zeal of the young men who had dedicated themselves to the noble service of their religion.

Investigations before the war as to the effects of the French law compelling priests to serve in the army showed that, instead of military service in the barracks corrupting or lessening the religious faith of the young priests or seminarists, it had tended greatly to increase that faith and better to qualify them for the performance of their holy work. It was also observed that the example of these pious young men did much to preserve and strengthen

the religion of their lay comrades, and that it had introduced into the ranks of the army a constant and beneficent religious and moral influence that otherwise would not have existed.

The great war came, and thousands of French priests were called upon to abandon their work, to lay aside their cassocks, and to don the uniform of their regiments and carry arms. More than twenty thousand Catholic priests have been serving in the French army, sharing all the dangers and hardships of their comrades, twenty-five hundred have been killed in battle, whilst fifteen hundred, serving as chaplains, stretcher bearers, hospital attendants, etc., have also been killed by the enemy, making a total of over four thousand priests who have died for France in this war!

The remarkable revival of Catholicism throughout France since the war began is undoubtedly due in great measure to the heroism shown by Catholic priests on the field of battle, and it is becoming constantly more and more evident that the service of priests as members of the fighting force of the French army has greatly strengthened all religions and made the Catholic Church stronger than ever in the hearts of the French people. Men of all classes have come to respect religion and honor priests more than they ever did before. As President Lincoln said in his immortal second inaugural: "The Almighty has His own purposes." When a full record is written of the courage and fortitude of French priests and nuns during this war, the world will know how largely their example has contributed to the religious renaissance in the

Allied Nations. Indeed, what man in Christendom — Christian, Jew, or atheist — has not been given a glimpse of the sublime by the mere mention of the name of Cardinal Mercier, whose life truly reflects the glory and inspiration of the Catholic Church.

I will cite to you three examples of the many incidents of daily occurrence which have thrilled France and brought about the new spirit of religious tolerance. A Catholic priest was serving at Arras as captain in an infantry regiment that had been ordered to attack the enemy. In a field behind the trenches he erected a rude altar from boxes heaped together, decorated it as best he could, and, drawing on the sacred vestments over his uniform, celebrated the holy sacrifice of the mass in the presence of the regiment, and administered communion to all who wished the supreme consolation of our faith before going into battle and facing death. The mass over, the priest-captain took off the sacred vestments, buckled on his sword and revolver, knelt a few minutes in prayer before the altar, then led his company into battle cheering, and was killed at the head of his men.

In an order of the day in September last, a French general, in recommending a Catholic priest, Sergeant Lamy, for the military medal, declared that the priest had been wounded five times without ceasing to fight, that when unable to walk he had crawled to his wounded comrades and encouraged them, that he had given them to drink from his flask, that he had administered to them the absolution they asked, and that, when he was

carried to the ambulance, his courage and self-forgetfulness excited the admiration of all.

Indeed, too numerous to mention have been the instances of the decoration of priests for bravery in battle, of war medals that living priests carry or that are pinned upon the breasts of dead priests in their graves, of priests decorated with the Legion of Honor for exceptional courage on the field of battle.

Finally, there is a striking incident which sublimely symbolizes, perhaps more than any other, the spirit of religious tolerance and mutual respect which it is hoped will develop in France and elsewhere as a beneficent result of this awful war, and which may fortify and purify her as nothing else, be a bulwark of regeneration and strength for the whole nation in the future, and promote the true charity which Christianity enjoins.

After a battle of exceptional carnage, a Catholic soldier lay dying in agony in No Man's Land between the trenches and within the reach of German guns. He called for a priest, but none was present. A Jewish rabbi heard his cry, and taking a crucifix that was in the trench, he left the place where he was safe, and going to the side of the dying Christian knelt beside him and held to his lips the image of the Saviour. Whilst thus kneeling the rabbi was killed by a German bullet. I doubt if there is a Christian in all the world who will not join with us in saying of that noble Jew *requiescat in pace!*

Those of you who have been in Paris, or who have read of her art treasures, will recall the Sainte

Chapelle, which adjoins and forms a part of the Palace of Justice across the Seine. This chapel is perhaps the most perfect example of its kind in Gothic architecture, and has been called one of the wonders of the Middle Ages. It was built at the time of Saint Louis. For many generations the custom of the French Bar at Paris had been to have celebrated once a year in the Sainte Chapelle a mass which was known as the Mass of the Holy Ghost, or Red Mass — *Messe Rouge* — undoubtedly because of the color of the vestments of the priests and of the robes of the advocates. The function was wholly voluntary, although in pursuance of an immemorial custom of the profession.

But, a few years ago, the French Chamber of Deputies decided that this observance of their religious faith by the élite of the French Bar, if not of the French nation, gave offense to what was called liberty of conscience; thereupon a resolution was passed requesting the Minister of Justice, who is also the Garde des Sceaux, to prohibit the celebration of any religious ceremony in buildings connected with courts and tribunals, and especially the *Messe Rouge*, and it was accordingly forbidden. The Sainte Chapelle was thereupon dismantled as a church. From that day on, no masses were celebrated in the chapel.

In May of last year, however, the members of the Bar in Paris petitioned that the *Messe Rouge* might be celebrated again at the Sainte Chapelle in memory of their many associates who had died in battle for France during the present war, and the French Government granted the request: The

altar was replaced and decorated anew for the holy sacrifice, and the Cardinal Archbishop of Paris officiated. Going to the door of the chapel, he there met the President of the French Republic, and, grasping him by the hand, led him up the aisle to the altar. No incident in the present war more graphically and encouragingly portrays the spirit of the *Union Sacrée* and of the revival of religion and religious tolerance among the leaders of public opinion in France than the mass thus celebrated in the Sainte Chapelle in memory of the French advocates who had given their lives that France might live.

I have mentioned these evidences of the revival of religion in France and of mutual respect and toleration in matters of faith with the hope that they will serve to fortify and inspire the sons of Fordham who are going to the war, as well as those who will remain at home.

The list of graduates of the University who have served in other wars is a long and honorable one, and the example has not been in vain. Fordham is very proud of the present list, and it expects the men on that list and those who are to join them to maintain the high and splendid patriotic traditions of their Alma Mater.

Of all the calls for patriotic service in this war, none I venture to assert has been more eloquent or inspiring than that issued by His Eminence Cardinal Farley and read in our churches. We expect every Catholic to live up to that appeal, each according as he may and can best serve his country. The graduates of Fordham will particu-

larly reflect that most men and women must serve in this war without what the world calls special distinction, but that all can earn and enjoy the sterling reward and inward satisfaction and inspiration that will come from good and faithful service and from the consciousness of duty done. All can be proud that they have been afforded the privilege of serving the Nation and humanity. The enduring work of the world and the things that are really worth doing are generally done by the obscure workers who shun advertisement and publicity and who are willing to serve in the ranks and to subordinate self to a great cause. In an undertaking such as this war, it is as important that men should know how to obey and follow as it is that some should be able to command and lead.

In this aspect, the graduates of Fordham should always profit by the example of the scholarly and devoted priests of their University, who always subordinate self for the cause, who have no expectation of individual distinction or public recognition, and who seek or wish no reward except the privilege of teaching the truth.

May the graduates of Fordham, therefore, emulate the lives of their teacher-priests who, sustained and uplifted by an unfaltering trust, serve unselfishly and self-sacrificingly in season and out of season for the Church and the Republic, and in so doing ever labor, in the lofty motto of their great order,

*Ad maiorem Dei gloriam.*



## THE AMERICAN RED CROSS <sup>1</sup>

OF all the horrors of the present war, the greatest has undoubtedly been the inability of the Allies for months after the struggle began to furnish adequate medical treatment and supplies, proper food and sanitary accommodations for their wounded and sick. This chapter of unpreparedness is indescribably sad and indelibly discreditable.

During the first year of the struggle thousands upon thousands of the soldiers of the Allies died or were permanently maimed, diseased and incapacitated for life, solely because they did not receive proper or prompt medical attention and nursing, and were left without the most elementary comforts. The military authorities and the Red Cross societies found themselves woefully lacking in equipment, facilities and supplies, in nurses and surgeons, in ambulances and beds, in buildings and tents to accommodate the wounded and sick, and were overwhelmed by the number they were called upon to care for. Innumerable were the instances of the wounded whose lives could and should have been saved and innumerable the instances of frightful and unnecessary pain and suffering endured by those whose every want should have been foreseen and provided for by the great and rich nations whose battle they were fighting.

<sup>1</sup> Remarks at a meeting of the Philadelphia Red Cross War Committees held in Philadelphia, on June 18th, 1917

I do not dare to trust myself in any attempt to describe the sickening details of this awful story — of the thousands who bled to death for want of medical attention, of the thousands whose wounds became infected for want of surgical dressings, of the men — our fellow human beings — whose feet were frozen and had to be amputated for want of proper footwear, of those whose arms or legs had to be amputated without anaesthetic, held down on the operating table by the nurses, of those who succumbed for lack of nursing, of those who suffered hours and hours and sometimes days before their excruciating agony could be relieved — all because the people for whom they were fighting had neglected to furnish the necessary attendance and supplies

Now, after thirty-five months of the war, with all its horrible lessons and all its awful warnings, we, the richest and the most powerful nation in the world, find ourselves as unprepared as was England in August, 1914, when she sent her small but immortal army to Belgium to face ten times its number in order that the plighted faith of England to a small and weak nation might be kept inviolate

The question before us to-day is whether we shall send our young men to fight for us on the battle-fields of Europe, three thousand miles away from home, without adequate preparation to save them from unnecessary suffering and pain and from needless death. It is as certain as that the sun will rise tomorrow that if we Americans fail to respond to the present call of the Red Cross, our

own soldiers will suffer and die who could be and should be saved from pain, from death, from disease, from mutilation.

After the horrible experiences in every war since the Crimea, after the warnings preached year in and year out by all Red Cross organizations throughout the world, after forty years of open preparation for aggressive war by the German Empire, it is hard to find excuses for the unpreparedness of the Allies, except perhaps that no one realized what fiendish and effective instruments of destruction brutalized science had developed. But after these thirty-five months of the example of suffering Europe, there will surely be no excuse if we Americans find ourselves unprepared, and our conduct will be reprehensible in the extreme if we neglect now for an hour longer to make the necessary preparations which, at any cost, should guarantee that not a single American shall suffer for want of medical treatment, proper food and sanitary accommodations.

This country of ours will, indeed, not be fit to live in and certainly not fit to fight or die for if we, with a population of one hundred millions and rich and prosperous beyond the common allotment of Providence to men, shall now fail to respond to the call of the Red Cross War Council, and refuse to give it from our plenty adequate means to carry on its work

In addition to the imperative duty to protect our own sons, comes the beseeching, heartrending call of humanity. On all the battle fronts, thousands of men are dying every day unnecessarily and are

suffering unnecessarily from wounds, are becoming diseased and contracting tuberculosis and all the frightful ailments generated by war, unsanitary conditions and pestilence, and millions of men, women and children are hungry if not starving. We are called upon to help save their lives for the future. We are called upon to relieve and sustain these great civilized and lovable peoples of Europe, bound to us by so many ties. Shall we fold our arms and let them suffer and die because we refuse to give a fraction of what God has given us?

But we hear on all sides three questions, three chilling and sordid complaints. The first series of questions is: Why did not the Red Cross wait a few weeks before making this appeal, and let the clamor and recollection of last week's campaign for the Liberty Loan become more or less dim? Why follow so soon upon that great appeal to the patriotism of the country? Why press the generosity of the people? Is not the present time inopportune? The second question is: Why should not the army and navy take care of its own wounded and sick under competent and trained army doctors and orderlies and nurses? And the third question is: Why should not the funds be provided through taxation by Congress? When thousands of millions are being raised through government appropriation, it is urged, an extra hundred millions would not make much difference and would not be felt by anyone.

But the objectors wholly fail to recognize that the Liberty Loan called for no gift and no sacrifice. Every dollar will be returned with interest. Not

a single cent of risk is involved in buying the best investment bond in the world. Every dollar subscribed could have been procured by taxation, but bond issues were fairer and more advantageous. The present appeal is the first call upon the Nation at large—upon every citizen of the Republic voluntarily to make some sacrifice for safeguarding our own sons and relieving the misery of countless human beings.

To the first question relating to the time being inopportune, let me briefly answer in the words of the Chairman of the Red Cross War Council, Mr. Davison. When urged to postpone the appeal, he answered: "If we wait, it may be too late." And Davison was right: no time is too early and no time could be inopportune to make this call upon the patriotism, charity and mercy of America. The Allies waited; and it was too late for thousands of their soldiers, and thousands upon thousands of their civilians. We Americans waited when the Civil War broke out, and thousands of our soldiers died unnecessarily or had to go through life maimed and diseased because we were unprepared and remained unprepared until private citizens organized the famous United States Sanitary Commission under the leadership of Dr. Bellows. During the Spanish-American War we again waited until it was too late, as shown by the record of thousands of our men unnecessarily dying or contracting incurable diseases in Cuba and at our military camps, on Long Island, at Chickamauga and at Santiago. We have now waited for nearly three years when we might have been preparing,

and if we wait any longer it may be too late for hundreds, if not thousands, of our own sons.

Indeed, it seems to me that, if anything, this appeal should have preceded the Liberty Loan, vital as that loan was. Mr. Davison and his colleagues are absolutely right when they declare that no time is to be lost, and that it would be utterly indefensible and callously reckless to wait a day longer.

The second question inquires why the Government should not do the work which the Red Cross does if only in connection with the care of the military wounded and sick. The answer is that the universal experience, in time of war, is that supplementary aid, relief and service from voluntary sources is indispensable. Every war for a century has demonstrated the inability or incapacity of military or other government officials to do this relief work. Experience has repeatedly shown that such work is best handled by civilian organizations. This has been the consensus of opinion after thorough investigation at all the International Red Cross Conventions since 1863. And this was the experience in our own Civil War and Spanish-American War. Moreover, the work of the Red Cross is essentially one of sentiment, of charity, and of mercy, which somehow cannot be satisfactorily done in great emergencies and cataclysms by bureaucrats or functionaries. It calls for a lofty humanitarian spirit and altruistic service and a special uplifting enthusiasm which money cannot buy; it requires a sympathy which salaries cannot

secure No money compensation could possibly have enlisted the splendid talents, the executive and financial genius, the self-sacrificing spirit and high enthusiasm of a Davison and his associates. I wish I had the time to pay them the tribute of thanks, admiration and gratitude the country owes them for all they are doing. And, if they succeed, and I believe they will — for they must or we would despair of the future — if they succeed in their comprehensive and far-reaching plans, they will do much towards winning the war and bringing about a just and lasting peace. But above all they will add immeasurably to the prestige and grandeur of this great, loyal, generous, beloved country of ours.

The third objection that meets us on all sides is that the funds for the Red Cross work could readily have been raised by means of taxation or the issue of bonds.

A sufficient answer to this complaint should be that the President and Congress, after full consideration, have otherwise determined and have said that the funds for the Red Cross should be supplied voluntarily by the people of the country. They, our representatives, have referred the whole duty and burden to us, the American people, as properly a matter to be left to voluntary action — leaving to us the extent of the relief which we shall contribute voluntarily out of our plenty, leaving it to us to show whether we are so selfish and callous as to refuse to make any sacrifices unless wrung from us by taxation. As yet we have made no sacrifices — certainly not in taking bonds and

thereby making a safe investment. I believe that the decision of Congress was wise and right

The work of the Red Cross is a service of mercy to our own people and to humanity, and it should not be made the subject of compulsory taxation. The people at large should be appealed to and should all have an opportunity of showing their voluntary patriotism and sympathy by contributing even if it be a mite to this field of relief and charity. Taxation, by means of an income tax, would only reach a very small percentage of the population of the United States. The Red Cross War Council hopes that the fund they seek will be contributed by at least ten million Americans, and they would infinitely prefer to have one hundred thousand subscriptions of ten dollars each than one subscription of one million dollars. They want to be able to go to all those whom they relieve and comfort and save, and say. "This is the willing and loving gift of millions of American citizens and not what has been wrung from them by taxation, it is from the people home who are back of our soldiers at the front." This will afford an immense although subtle and indefinable joy and comfort to suffering soldiers who receive help so sweetened and thus twice blessed, blessing him that gives and him that takes!

How proud we Americans will be, what a splendid page we shall write in the history of humanity, how high we shall stand in true national glory and grandeur if the result of this appeal shall be to proclaim to the world that the people of this great, free, self-governing republic have voluntarily



given \$100,000,000 to help the wounded, suffering, and afflicted, and to protect the helpless and feed the starving!

It is said that we cannot add a cubit to our stature by taking thought, but surely we shall add many a cubit to our stature as a nation if we can record to the honor and glory of this generation and of Christianity that we raised the largest sum ever even thought possible in the history of the world for this great work of charity and mercy.

But the Red Cross, if adequately supplied and equipped, should also from the material side be regarded as a practical auxiliary to the fighting force and as rendering the army doubly efficient and effective. A French officer told me recently that in many instances during the past three years the offensive of the French and British armies in France had to be checked or stopped because of the great number of the wounded who could not be taken care of and who were dying for want of medical attendance, nurses and equipment. He declared that it would have been inhuman to lead men into battle under such conditions. Hence, those who think only of prompt and complete victory at any cost of human life and suffering should appreciate that the way to render the army efficient and to assure victory is to enlist and equip the Red Cross as the indispensable auxiliary of the fighting force, and to give it the means to relieve the army of the care of the wounded and sick, thereby affording it a free hand for its work.

Finally, it seems to me that you would not want

a spokesman of the Red Cross War Council to allow this memorable occasion to pass without some recognition, however inadequate, of the coöperation of the women of Philadelphia, who have always been so patriotic and charitable, and who are certain to respond to any call for the relief and prevention of suffering, pain and misery. Indeed, the field of the Red Cross is in large measure the peculiar province of women; and without them now there would be little hope of success, for they must be relied on not only to help raise the needed funds, but to furnish the necessary nurses and to prepare the indispensable supplies.

We should never forget that the inspiration of the Red Cross — of that great volunteer army of mercy which has done so much good in the past and which is destined to do so much more good in the immediate future — sprang from the example of heroism and devotion of women sixty years ago on the bloody battle-fields of the Crimea — sprang into life from the splendid service of the noble British women under Florence Nightingale, who nursed the British sick and wounded, and from the holy Catholic nuns who nursed the French sick and wounded during that awful war. Then, as history tells us, thousands of the best of the manhood of England and France suffered frightful pain and died miserably because their governments had failed to provide for the work which the American Red Cross proposes to do in this war, and thousands were saved from death and from being permanently maimed or diseased by the nursing of these noble and heroic women.

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The wounded and sick British soldiers far away from home, cruelly suffering through the long nights, called Florence Nightingale, as she passed from bed to bed and room to room, "The Lady of the Lamp," and she and her assistants were known as the "Angel Band" — angels of mercy!

You may recall that our own poet Longfellow dedicated to Miss Nightingale a poem entitled "Santa Filomena" — the English word nightingale being *filomena* in Italian. May I ask your further patience while I read two stanzas from that poem?

On England's annals, through the long  
Hereafter of her speech and song,  
That light its rays shall cast  
From portals of the past.

A Lady with a Lamp shall stand  
In the great history of the land,  
A noble type of good,  
Heroic womanhood.

We Americans confidently believe that on the honor roll of this great war and its record of lives saved, of suffering relieved, of bereavement comforted, of sorrow alleviated, of starving fed, the Recording Angel in Heaven will inscribe the names of innumerable American women bearing the ennobling badge of the Red Cross, whose heroism and self-sacrifice will be quite beyond the poor power of human words to express, but who will stand in the history of our land as examples to future generations of the noblest type of good, heroic, self-sacrificing American womanhood, which is the pride and glory of our day and generation.

## WAR CAMP FUND OF THE KNIGHTS OF COLUMBUS<sup>1</sup>

IT is no exaggeration to say that nothing in the history of the Catholic Church in America has been more inspiring to its members, or more deserving of praise and gratitude than the splendid work of the Knights of Columbus on the Mexican border last year in connection with the various military camps then established. This service received universal commendation. It was, indeed, fortunate that the Catholic laity of America had such an organization prepared to step forward and do for their soldiers what the Young Men's Christian Association was doing for Protestant soldiers.

We have now entered upon the World War. More than one-third of the American Army and Navy will be constituted of Catholics, and it is our duty to consider what provision shall be made to supply proper and adequate religious influences and wholesome and moral recreation centres for our officers and soldiers. The work so well begun last year by the Knights of Columbus must be continued and extended. It is clearly our bounden duty to see to it that suitable buildings and supplies are furnished and that a sufficient number of priests are attached to all camps here and abroad. And we must pledge ourselves to help at whatever

<sup>1</sup> Remarks at meeting held in Glen Cove, Long Island, on July 22d, 1917

sacrifice It would be a disgrace to our Church if its members should be found unwilling to make sacrifices for such a cause — if the Catholics of America should fail to respond to the appeal now being made in the name of the Knights of Columbus for a fund of one million dollars for this essentially patriotic and Catholic purpose, particularly when we remember that nearly four million dollars was readily raised for the Young Men's Christian Association by voluntary contributions.

I deem it fitting and proper to impress upon you at the outset that you are being asked to contribute to what is to be in fact and in truth a CATHOLIC WAR CAMP FUND, and not a fund which will in any sense benefit or enrich the Knights of Columbus It is to be a special trust fund for the benefit of our soldiers, and it will be sacredly administered and accounted for as such. Every dollar will be spent upon the war camps. Hence, in giving to this fund, we are not giving to any society, but simply availing of an existing Catholic organization, which has shown itself to be exceptionally competent and efficient in this work, which is trustworthy, and which seems to be the best equipped, if not the only, Catholic organization ready and able immediately to take up a task of vital importance to religion as well as to the Nation — a task which will admit of no delay. In other words, we are utilizing a reliable and efficient Catholic organization as the instrumentality by means of which the contributions of Catholics throughout the country may be systematically collected, conserved and distributed for

this patriotic work. I want to emphasize this as strongly as I can because there is some misapprehension on the subject, and it would be most unfortunate if Catholics refrained from giving because of any idea on their part that only members of the Knights of Columbus should contribute. In such a matter, some organization must take the lead and assume the responsibility; and as the Knights of Columbus are equipped for the task, they should have our help and support. The organization has the recognition and approval of President Wilson and the endorsement and blessing of Cardinals Farley, Gibbons and O'Connell, and I am convinced that it deserves the unqualified confidence of all. We should not have conflicting efforts by half a dozen separate organizations undertaking the same work and covering the same field.

I would also like to answer the objection that has been made that we ought not to incur the expense of duplicating facilities which the Y. M. C. A. is prepared to furnish, but should avail ourselves of its buildings and facilities for recreation purposes and church services and contribute to its funds.

Now, there can be no doubt that the Y. M. C. A. did much good work last year on the Mexican border and that it will do much good work in the future. But conceding everything that is claimed for the quality of its work and the excellence of its service, it is, nevertheless, essentially a Protestant organization, and its fundamental objects and purposes are religious. This is quite proper, for its chief merit and its best and most fruitful service have sprung from this religious aspect. Liberal

and generous though the Association may be to Catholics, the religious atmosphere, example and influence are always and necessarily Protestant. In fact, there should be no ground for the current erroneous impression that the Y. M. C. A., as a Christian association, draws no distinction between Protestant and Catholic, for under its by-laws no Catholic can be an officer or an active voting member of the organization. I mention this not to criticise the Y. M. C. A. I admire its organization, and I recognize its really efficient and beneficent work. But as Catholics we cannot surrender to a Protestant organization the performance of the duty we owe to our soldiers to provide facilities for the observance of their religion and for wholesome and moral recreation under Catholic influences and surroundings.

There is something far more important to Catholics than recreation and amusement, and that is their religion. Our soldiers and sailors when in the home training camps and when abroad at the battle front and on the high seas should have their priests with them to administer the spiritual comfort, inspiration and consolation of the faith in which they believe. This cannot be delegated to Protestants, or to so-called undenominational organizations.

You must bear in mind that between 30 and 40 per cent. of the American Army and Navy will be Catholics, that of the present draft more than 200,000 will be Catholics, and that ultimately there will be more than 1,000,000 Catholics in the service of the Nation. In the New York National

Guard to-day, as I am informed, fully one-half are Catholics: for example, over 90 per cent. of the famous 69th Regiment, over 80 per cent. of the 12th, and over 60 per cent of the 14th and the 22d. More than one-third of the enlistments so far from Glen Cove are Catholics. I venture to assert that in this war, as in every other war in which the Union has been engaged, the Catholics will furnish more than their quota. Indeed, does not our Church inculcate patriotic service and sacrifice as a religious duty, and love of country and flag as part of our religion? No good American Catholic can be other than patriotic.

The hundreds of thousands of Catholic men who are now going forth to fight for us, many of them to suffer cruelly or to die for us, are entitled to all the comfort, inspiration, sustenance and consolation that our faith affords. So far as practicable here and abroad, they must be furnished full and convenient opportunity to attend mass in Catholic chapels; they should have their priests by their side to uphold and uplift them by Catholic teaching and example, and it is our duty to supply the necessary funds regardless of how much it may pinch or inconvenience us. Catholics of America have never before, even during the Civil War, been called upon to sacrifice for an object more essential to the future of the Church than this matter of providing religious influences for the great national army now being organized.

To many the greatest phenomenon of this awful war has been the revival of religion, especially in Catholic France. Indeed, in times of awful suffer-



ing and crushing, overwhelming calamity, human nature, profoundly stirred or facing death, always turns instinctively and intuitively to religion for strength and comfort. The religion of France has been revived by the heroism of her Catholic soldiers and preeminently by the superb bravery and spirit of patriotic sacrifice of her Catholic priests. Under the French law, priests and seminarists must serve in the army and navy. More than 20,000 Catholic priests have been fighting in the French army, sharing all the dangers and hardships of their comrades. More than 4,000 French priests have been killed. But no missionaries ever made more converts to the faith, no martyrs ever died more truly for the faith than these soldier-priests of France. Their heroism has immensely strengthened the Church in the hearts of the French people, and it has brought about the great renaissance of religion observable everywhere in France. Before French regiments now go into battle most of the men assist at mass.

The French, Belgian, English and Irish Catholic soldiers have during the war derived immense comfort and spiritual strength, courage and resignation from the presence of their priests by their side. The question to-day before the Catholics of America is whether they, who are to remain safely at home because of age or health or other reason, will now fail to provide for their own soldiers the immeasurable comfort and inspiration of having their priests at their side through the weary months of the trying ordeal of training and at the battle front when facing death.

There can be no doubt that the provision made for chaplains in the plans for the army is wholly insufficient to secure the necessary number of priests. In many of the regiments of the regular army there will be no Catholic chaplains at all, and Protestant ministers will be acting as chaplains.

I understand that nearly 20,000 American Catholic soldiers are now in France with General Pershing and that only one Catholic chaplain accompanied the troops. Ten days ago, a cable was sent to France asking what provision had been made on the ground, in the hope that the Church in France would be able to supply English-speaking priests. The answer came back to send American chaplains. But no adequate provision had been made. There ought to be at least ten priests with our troops now in France. On Friday afternoon this matter was called to the attention of the head officer of the Knights of Columbus, Supreme Knight Flaherty, and he was able at once to say on behalf of his Order that it would supply the necessary funds, and that there need be no delay on account of the expense. Within a few days at least six priests will be on their way to France to join the troops over there. This has been rendered possible only because the Knights of Columbus were prepared to guarantee the necessary funds. This incident may help to convince you how necessary it is to have a Catholic organization ready to act in such emergencies.

All Catholics, whether or not members of the Knights of Columbus, should, therefore, ungrudg-

ingly contribute as much as they can afford now and as often in the future as the continuance of the war may require.

## THE CATHOLIC WAR FUND <sup>1</sup>

IT was not necessary to hold a mass meeting of the Parish of St. Patrick's Cathedral in order to prove the patriotism of its members. Nor was it necessary in order to show their readiness to sacrifice, or even to induce contributions to the Catholic War Fund. The young men of the parish have already demonstrated their readiness to sacrifice their lives, and all have shown willingness to contribute to the American Red Cross and other patriotic war funds

The spirit of sacrifice among our fellow parishioners needed no urging. Our service flag is entitled to a thousand stars, and is a constellation that proudly proclaims the response of our youth to the call to serve in their country's defense. That response was much more than our relative proportion, and is a permanent credit and glory to the cathedral. As eloquently pointed out by His Eminence, whose absence to-night we so much regret, the supreme test of patriotic sacrifice — the last full measure of devotion which can be offered for country — is to be found in those who are willing to offer their lives and those at home who ungrudgingly send to danger, suffering and perhaps death, those dearer to them than life itself. The boys of our parish who have already gone and

<sup>1</sup> Remarks at a mass meeting of the St. Patrick's Cathedral Parish held at the Century Theatre, New York City, March 10th, 1918

those at home who stand ready and willing to go and their families have given evidence of devotion to Country and Church infinitely more true and convincing than anything that can be measured by money values or contributions, or by

What men call treasure, and the gods call dross.

I say Country and Church, *Patria et Ecclesia*, for they are inseparable in this awful crisis, and are alike menaced. If Prussian barbarism and brutality triumph, it will mean the overthrow not only of our cherished American institutions of political liberty and political justice, but of our Church and its Christian standards of morality, charity, honest dealing and good-will among men; it will mean the destruction of all law, all right, all the principles and ideals by which the civilized world now lives. Eliminate these principles and ideals of human conduct, and Christianity will be an empty shell; the form may remain, but the spirit and substance will have vanished.

As to our quota of the Catholic War Fund now being raised for the purpose mainly of supporting the splendid camp work being done by the Knights of Columbus and thereby maintaining Catholic chaplains and influences, no one need doubt for a moment that when the campaign is over, the pledge made by our beloved rector, Monsignor Lavelle, will not only have been kept, but will have been doubled and tripled

This meeting was called for the purpose of voicing, on the eve of the campaign for the Catholic War Fund which will begin next Sunday, a message of coopération, unity and inspiration to all

the other parishes in this diocese and to every Catholic parish from one end of the country to the other, declaring that we of St. Patrick's have hung the flag of the Union high on the spires of our stately and noble cathedral and placed it alongside of the Cross, as it ever is in our hearts, that we have pledged to each other to devote ourselves unreservedly to the great patriotic tasks and the immense sacrifices before us, and that, in the inspiring words of our President, we have determined to "dedicate our lives and our fortunes, everything that we are and everything that we have" to the support of the Government and the winning of this just and holy war — to bear and endure and sacrifice until a complete victory has been won — an emphatic and unmistakable victory for right over wrong. I have been asked to address you because of my service under the Selective Service Law as the Chairman of the District Appeal Board for Long Island.

The world is facing the greatest crisis and the greatest scourge that has arisen since the overthrow of the Roman Empire. The issue is again between truth, morality and religion on the one hand, and barbarism, brutality and vandalism on the other hand, between Christian civilization and materialistic, conscienceless, merciless militarism. The hope of saving Christianity and all that it implies, all that it has so far accomplished in the betterment, uplift and blessings it has brought to humanity, now rests in greatest measure upon the efforts, the services and the sacrifices of the American people. It seems, indeed, that America's

heroic day has come, when she is to fulfill her highest and noblest mission. If we Americans are now found wanting in the task and duty ahead of us, if we shrink from the great sacrifices necessary for victory, mankind may have to suffer for centuries. A thousand years of misery and despair followed the fall of Rome before a militarism not more barbarous, merciless, or bestial than German militarism in this war. We must not minimize the menace that would follow from the triumph of German arms and German methods and standards. Brute force would then rule the world. Let me recall the admonition of Lincoln to our fathers and grandfathers at the darkest crisis of the Civil War, equally applicable to us to-day.

The fiery trial through which we pass will light us down in honor or dishonor to the latest generation. We shall nobly save, or meanly lose the last, best hope on earth

The most striking phenomenon of this war, probably the most remarkable, has been the revival and awakening of the religious spirit. As ever in times of awful suffering and of overwhelming calamity, human nature turns instinctively to religion for strength, inspiration and consolation. There is something elemental in us that in great danger or sorrow draws us towards God. The literature of the war bears abundant witness of a constant hunger on the part of the soldier at the front for religion. As the "Times" declared in an editorial last Sunday, the man in the trenches clings passionately to his faith, and prays to God as never before for courage and fortitude. This

renaissance of religion in Europe and especially in France, is observable in all creeds, Catholic, Protestant, Jewish — all alike, when facing death and standing ready to sacrifice their lives for country and humanity, turn devoutly and reverently to their Maker along the old and tried paths of faith and prayer.

The same deep stirring of religious sentiment is also observable among us Americans. Our own Church, its priesthood and its laity, have entered upon the tasks and duties of the war with an intensified religious ardor, which has stimulated the spirit of unselfish patriotic service and sacrifice. How eloquently and inspiringly has Cardinal Farley called upon us to rally round the flag and to serve and sacrifice. The enthusiastic reception given Thursday evening by the citizens of New York to the Lord Archbishop of York furnished eloquent evidence of how strongly the Protestant churches are being stirred. And from the Jews comes the same testimony. All creeds are uniting in love of country and a willingness to sacrifice for civilization and humanity.

I can conceive of nothing more encouraging, nothing more likely to assure unflinching sacrifice to the bitter end, and to create the indispensable and invincible spirit never to submit or yield, than this determination of the Churches of America to throw themselves whole-heartedly into the struggle as a religious war, because they believe that the moral standards and ideals of every religion are vitally at stake. All creeds must now stand together, shoulder to shoulder, under the benedic-



tion of the Stars and Stripes, in a holy crusade of the twentieth century for right and justice. As Senator Root has inspiringly declared. "It is a war between Odin and Christ."

The distinguished and venerable Bishop of Nancy, the oldest member of the French Hierarchy, has preached as his profound conviction that on the result of this war hang the future and survival of the Catholic Church, and that the triumph of Germany would lead inevitably, as on a fatal slope, to the destruction of the vivifying, purifying and uplifting principles of Christianity.

Indeed, the frightful devastation and suffering caused by Germany should make a special appeal to the sympathy, the deep moral indignation and the horror and resentment of the Catholics of America. Prussian brutality, vandalism and incendiary fury have been especially directed against our churches, our priests and our nuns, in pursuance of a deliberate and systematic plan to strike at the very heart of the Catholic Church in Europe. Before the war, the German Emperor declared to the Landgrave of Hesse that he hated the Catholic religion, and that he considered its destruction to be the supreme aim of his life; and again and again, as unimpeachable witnesses have testified, the Prussian soldiers have gone about their foul work shouting "Down with Catholicism. Death to the priests." It was in pursuance of this fixed policy that saintly nuns have been unspeakably maltreated and more than fifty Belgian priests and fully a score of French priests have been brutally murdered.

The peoples who have suffered most from Prussian brutality and bestiality are the Catholic peoples of France, Belgium, Poland and Italy. The finest examples of Catholic art and Catholic architecture in cathedral, church and chapel have been ruthlessly destroyed, and much of the artistic glory that was ours in Europe has passed away forever. The sanctuaries of our Church have been desecrated and plundered; the holy tabernacles have been rudely broken into, brutal and sacrilegious hands have been laid on the relics of our martyrs and on our sacred vessels. Louvain, where Catholic students flocked from all quarters of the globe — Louvain, the pride of Catholic scholarship, with its exquisite Church of St Michael, its beautiful Collegiate Church of Saint Pierre, its superb halls of learning, its incomparable library — lies in ruins.

The most inspiring images of the great age of Catholic faith, exquisite cathedrals and churches, wonderfully artistic monuments that seemed too beautiful for human workmanship and of which many a poet has sung that angels must have chiseled their stones, have been desecrated, ravaged and burned. Witness Mahnes, Ypres, Arras, Soissons, Notre Dame of Brebières (the Lourdes of the North), St Etienne of Bruges, and hundreds of other temples and shrines laid waste in Belgium, in France and in Poland. And crowning this frightful vandalism was the bombardment and destruction of the royal and incomparably beautiful, the radiant Cathedral of Rheims, so sacred to us as the birthplace of Catholicism in Gaul.

All these ruins of our cherished temples and sacred monuments, many of them still smoking, their very stones, cry out to us from Catholic France, Belgium and Poland to avenge them *Lapides clamabunt!* All these martyred priests and nuns call to us to punish their murderers. And with God's help and the indomitable spirit and fortitude of our country, we will avenge and punish, if it shall take seven upon seven crusades to do so

## TRIBUTE TO FRENCH SOLDIERS <sup>1</sup>

OF all the crimes that history has recorded of the nineteenth century none now seems to us more brutal or more indefensible than the dismemberment of France in 1871 and the transfer to Germany of the French territory and French population of Alsace and Lorraine

But Germany was not alone to blame. The other great and powerful nations stood by mute, with folded arms, and made themselves more or less responsible by failing to answer the heart-rending appeal of France, even after the sublime and prophetic protest at Bordeaux on the 17th of February, 1871, drawn by Gambetta and his colleagues, in which the people of Alsace and Lorraine through their representatives implored France and Europe not to abandon them to the Germans. I sometimes fancy that the historian of the future may characterize the present war as an example of retributive justice upon those who acquiesced in or abetted as well as upon those who committed that outrage.<sup>2</sup>

<sup>1</sup> Remarks at banquet given in honor of the Chasseurs Alpains by the Association Générale des Alsaciens-Lorrains d'Amérique at the Waldorf-Astoria, New York, May 10th, 1918

<sup>2</sup> The prophetic warning of the famous protest and declaration at Bordeaux of February 17th, 1871, should be recalled, for it emphasizes both the lesson and the duty

"L'Europe ne peut permettre ni ratifier l'abandon de l'Alsace et de la Lorraine. Gardiennes des règles de la justice et du droit des gens, les nations civilisées ne sauraient rester plus longtemps insensibles au sort de leurs voisins, sous peine d'être à leur tour victimes des attentats

Nor were we Americans blameless, for, had we protested firmly in 1871, when General Grant was President and his veterans of the Grand Army of the Republic were ready to respond to any call in the name of liberty and humanity, the ruthless hand of the Germans might have been stayed, the suffering and oppression of hundreds of thousands of French people might have been prevented, and the bleeding wounds of France might have healed.

The only excuse that we Americans can plead — and the French have always generously recognized it — is that in 1871 we did not understand and held ourselves aloof from European affairs and politics, and that we did not then appreciate the nature and extent of the wrong that was being perpetrated upon France in defiance of all principles of right and of all rules of international justice. Indeed, it is only recently that Americans generally have realized the merits of this burning and vital question, which has played such a commanding part in the causes that produced and now continue the pending war. But when we at last saw the light,

qu'elles auraient tolérés L'Europe moderne ne peut laisser saisir un peuple comme un vil troupeau, elle ne peut rester sourde aux protestations répétées des populations menacées, elle doit à sa propre conservation d'interdire de pareils abus de la force Elle sait d'ailleurs que l'unité de la France est, aujourd'hui comme dans le passé, une garantie de l'ordre général du monde, une barrière contre l'esprit de conquête et d'invasion

"La paix faite au prix d'une cession de territoire ne serait qu'une trêve ruineuse et non une paix définitive Elle serait pour tous une cause d'agitation intestine, une provocation légitime et permanente à la guerre. Et quant à nous, Alsaciens et Lorrains, nous serions prêts à recommencer la guerre aujourd'hui, demain, à toute heure, à tout instant En résumé l'Alsace et la Lorraine protestent hautement contre toute cession, la France ne peut la consentir, l'Europe ne peut la sanctionner "

our spokesman was the President of the United States, who pledged us unqualifiedly to the righting of this great wrong. May I repeat his language just referred to by Mr. Tardieu, which did so much to cheer and encourage the French people after their long struggle and suffering? It is in the message to Congress of the 8th of January last, when the President declared that —

The wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine, which has unsettled the peace of the world for nearly fifty years, should be righted, in order that peace may once more be made secure in the interest of all.

There is no aim of the United States in this war that is more fundamental, there is no pledge, we hope, that will be more faithfully kept, there is no goal for which we should continue to struggle longer than that of the emancipation of the French people and French soil of Alsace and Lorraine from the conscienceless domination and tyranny of the Germans. We are as much committed to that noble and inspiring task as to any other part of the work which we have set ourselves to do and to which we have pledged all that we have and all that we are.

There are surely some American war aims that ought to be beyond the realm of compromise or the give-and-take of diplomatic negotiations or of peace conferences — beyond the field of further temporizing, discussion, or concession — beyond the possibility of the hazard of plebiscites. Foremost among them should be the liberation and return to France of Alsace and Lorraine in all their integrity, the liberation and indemnification of Belgium, and the

liberation and indemnification of Serbia, as well as the liberation of Russia if the Russian people want to be liberated and if they will only bear their share of the burden and do their duty in the common struggle

The American soldiers who are in Europe under General Pershing as well as those who are going to join them as fast as we can find the transportation, — all those who are here tonight, have no doubt in their minds as to our war aims or the nature of the duty and the tasks before them. They are not asking each other, what are we fighting for? They know. They are fighting and will continue to fight at whatever sacrifice or cost for a complete victory that shall put an end to the menace of the inhuman and debasing brutality, bestiality and cruelty of the Germans, that shall overthrow for all time the military tyranny which has debauched Germany and Austria, and that shall reclaim and redeem every foot of territory now wrongly held and polluted by the German army

Soldiers of America with us tonight· our hopes are all with you and your comrades. As you and they serve so shall our future be· glory or disgrace, victory or defeat, freedom or slavery. Your task is a glorious and a holy one, far more glorious and holy than the task set before any other army in history — even before the Crusaders of old. Your mission, indeed, is to save the civilization of Christendom, and you are to earn for our day and generation, for our country and our beloved flag, the glory of having repaid to France an hundredfold, if need be ten thousandfold, the debt our forefathers

incurred in the days of Lafayette and Rochambeau — the glory of having helped France and England and Italy redeem Belgium and Serbia, and the glory of having contributed to the permanent re-incorporation into France of the valiant population and enchanting soil of Alsace and Lorraine, where by nature and in right and justice they belong

Soldats de France, Chasseurs Alpins, Corps d'élite, vous êtes les bienvenus. Votre présence ce soir nous honore et nous inspire. Je ne puis m'abstenir d'essayer de vous exprimer, dans votre belle et poétique langue, la reconnaissance profonde et l'admiration sans bornes que mes compatriotes ressentent de tout ce que l'armée française a fait et a souffert pendant bientôt quatre ans de guerre affreuse pour la défense du droit et de la civilisation. Les Américains voudraient aussi vous témoigner leurs condoléances pour vos compagnons d'armes qui ont donné leur vie pour la France et pour l'humanité, et s'associer de tout cœur à vos deuils. Nous saluons pieusement la mémoire de vos héros qui sont tombés au champ d'honneur pour faire triompher la cause sainte à laquelle nous sommes maintenant consacrés

On a déjà bien dit, et on doit le répéter, que les soldats français d'aujourd'hui ont écrit de leur sang une page de l'histoire de France auprès de laquelle pâliront toutes les autres pages de vos glorieuses annales.

Soldats français, vous avez déjà parcouru le chemin du devoir et de la gloire, demain vous allez parcourir le chemin de la victoire. Vous pouvez



retourner proclamer à vos compagnons d'armes, à vos femmes, à vos enfants, à vos vieillards — au noble et brave peuple français — que la grande république sœur a entendu l'appel de vos morts, qu'elle s'est engagée à tous les sacrifices pour soutenir la France, pour revendiquer vos droits à l'Alsace et à la Lorraine, pour garantir la sécurité de l'avenir à la France, à la civilisation, à la démocratie, à l'humanité tout entière.

Je lève mon verre en l'honneur des armées et des marines des Alliés Je le lève en l'honneur de notre Commandant-en-chef, le Généralissime Foch. Je le lève en l'honneur des Chasseurs Alpins. Et je le lève même plus haut en l'honneur du poilu de là-bas, dévoué, héroïque, patient, inconnu, obscur, et sublime, qui nous a sauvés tant de fois depuis la Marne et Verdun, qui a sauvé l'armée anglaise il n'y a que quatre semaines, et qui nous sauvera encore en attendant la Grande Armée que l'Amérique prépare!

Je lève mon verre aussi en l'honneur de cette amitié constante et tenace qui depuis cent quarante ans unit la France et l'Amérique — cette amitié inébranlable, qui, après la victoire certaine de demain, sera l'inspiration, l'espoir et le soutien de la paix réparatrice et régénératrice. Vive la France!

## UNITED WAR WORK CAMPAIGN<sup>1</sup>

ON behalf of the Greater New York Faculties and Students Division of the United War Work Campaign, we thank you most cordially for your attendance tonight and for your generous willingness to serve and cooperate with us. We are endeavoring to promote the success of what we profoundly believe to be a most essential patriotic service which we hope and pray will do lasting good.

The news that comes to us from Europe to-day, with its prospect of early and certain victory and peace, renders our work all the more necessary and urgent. After the great strain and exaltation of nineteen months of participation in the war, a moral and spiritual relaxation is inevitable. The months of the armistice, the months awaiting transportation after final peace, and the months of demobilization and readjustment will multiply temptations and causes of demoralization. Indeed, the work to which we are dedicating ourselves and which must be done will necessarily continue long after the signing of the definitive treaty of peace.

<sup>1</sup> Remarks at a conference of the representatives of the higher educational institutions of Greater New York called by the Faculties and Students Division of the United War Work Campaign Committee at the Waldorf-Astoria Hotel on Friday evening, November 1st, 1918 for the purpose of discussing plans for the organization and conduct of the campaign.

and long after the necessity for most of the other civilian war activities has terminated

We have made and are making great sacrifices and are expending billions of dollars in order to achieve a military and material victory, but all the expenditure of life and treasure and all the martial glory and material success will profit us little if we now neglect the moral and the spiritual, and imagine that our boys need no attention or protection on our part and can be left to take care of themselves without restraint or direction three thousand miles away from home. Martial glory and victory will profit us nothing if our young men return demoralized or corrupted. Such a just and holy war will, of course, tend to purify and exalt the Nation, but we would be foolishly blind if we did not realize the necessity and duty of shielding and fortifying our soldiers and sailors against the temptations and the moral reaction and relaxation that history teaches us have followed all great wars and crusades. In truth, with us may now lie the decision whether the fiery ordeal and awful agony of this war shall prove to be a destroying furnace or a purifying crucible

The joint mission work of the organizations now patriotically united and appealing for indispensable funds will be to save our own brave and devoted soldiers and sailors, who are sacrificing for us and winning victory for us, from those grave moral dangers that attend all wars, that are present in all camps, and that have followed all peaces.

We need not for a moment doubt the complete success of the present appeal to the American

people if only the vital underlying moral elements and problems can be brought home to them, and if they can be made to realize that this social welfare work is the vital concern of every family, every community, every class, every religion. But to none should it seem more vital or more appealing than to the educated classes who are the true leaders and upon whom rests the greatest measure of responsibility. To none should it be more obvious than to the faculties and staffs of our educational institutions whose lives are devoted to the profession of teaching morality, truth, the fundamental and eternal principles of right and wrong and of good and evil in human conduct, and to their pupils, the students of the present generation, in whose care will be the future of our country and the destiny and happiness of humanity perhaps for ages to come.

The distinguished speakers on our programme, whose presence at this organization conference we gratefully appreciate, will explain to you the origin, the scope and the general details of the United War Work Campaign, the necessity and urgency of the service, and the immeasurable advantages that must spring from the unity and coöperation of all religious faiths.

I shall, however, venture to say a few words of general application upon the spiritual and religious aspect of this movement as it impresses a layman, although I am not at all unmindful of the poet's admonition in regard to those who "rush in where angels fear to tread."

This frightful war, with all its evils, its horrors

and its brutalities, has brought a great blessing in a spiritual and religious awakening — in a deeper, finer, truer realization than ever before that “man shall not live by bread alone,” and that the spiritual in men and women is incomparably the more important part of their lives. We have awakened to different and higher standards of what really counts in life and what is really worth doing and striving and sacrificing for, and if necessary dying for. We have awakened to the duty and the beauty, eloquence and majesty of unselfish service and sacrifice, of devotion to country and humanity and of sympathy for the sufferings of others. We have been deeply stirred by the vision of our people from one end of the country to the other standing upright, steadfast, shoulder to shoulder — men, women and children of all conditions and ages and of all religions — uncompromisingly for the right at any cost of life and treasure as God gives them to see the right. And above all we have realized as never before that our religious life is not a disconnected thing to be lived apart or estranged from our fellow citizens, but that as Americans, Protestant, Catholic and Jew alike, we belong inseparably to the same country and are a part of its national character, of its national spirit, of its national soul, of its national destiny. From that conception has sprung a realization of true religious tolerance and of lofty and far-reaching duties and enduring obligations.

After a century of the priceless national asset of religious liberty, the war, in welding us together as Americans, has likewise brought the dawn of a new

era of truer religious tolerance with generous sympathy and mutual respect for the opinions and convictions and faiths of others. We are realizing that we do not differ in most of the elementals. Constitutions and statutes could and did give us religious political liberty, but they could not give us true and real religious tolerance. that had to come from the higher, nobler and purer patriotism that has emerged from the welter and horrors of this war and from its imperative call to common service and common sacrifice as Americans. It was truly worth all the sacrifices we have made to have brought about this supreme and inspiring revelation of the patriotic unity and devotion of the American people.

In my mind a parable constantly arises which I shall try to express. It seems as if our National and State Constitutions have been ploughing and harrowing and preparing the soil of America and as if the present United War Work Campaign were now to sow the seed of mutual tolerance, sympathy and respect, which will bear fruit an hundredfold and promote a higher patriotism, spirituality and idealism, as well as the moral, which after all is the truest grandeur of our Nation.

September 3d, the date of the President's letter to Mr Fosdick calling for unity of all religions in this war work, will ever be a red-letter day in the history of our country. Many will conceive that it is more than a coincidence that this unity was shortly to be followed by the collapse of the combination of might and brutality that Germany had created. Many will imagine that it was not a mere

coincidence that following that call and the ready response, the sun of assured victory and peace broke at last through the dark clouds of battle

At the outbreak of the European War in 1914, the French symbolized their great spiritual and religious awakening in the *Union Sacrée* of all classes of the Nation, and the effects amazed the whole world and were regarded by many as miraculous. We now have our own *Union Sacrée* symbolized in the United War Work Campaign and in its noble slogan "United we serve" May the inspiration and beneficent effects of that union long endure, long fortify our patriotism, and long uphold the steadfast and indomitable spirit that the American people have shown during these heroic and ever glorious nineteen months of war

## SUSPENSION OF SOCIALISTS BY NEW YORK ASSEMBLY<sup>1</sup>

I OPPOSE the adoption of the proposed resolutions because I believe that the Association would make a very grave mistake in acting upon so vital a question before it has been informed of the evidence upon which the charges against the five Socialist members of the Assembly have been based and in advance of the hearing before the Judiciary

<sup>1</sup> Remarks at annual meeting of The Association of the Bar of the City of New York, January 13th, 1920, in opposing the following proposed resolutions

Whereas, this Association regards with a deep sense of anxiety the action of the Assembly of this State in suspending from its membership the five members of the Socialist Party who were duly elected members of the Assembly at the last election, and

Whereas, any attempt by a majority to exclude from the Legislature those who have been duly elected to its membership, merely because of their affiliation with a political party, is un-American and, if successful, must destroy the rights of minorities and the very foundations of representative government, and

Whereas, the five members of the Socialist Party now suspended from membership are charged to be unfit for membership in the Legislature because of their membership in the Socialist Party, and not because of any personal unfitness, it is hereby

Resolved, that this Association is unalterably opposed to any action by the Assembly excluding from its membership, because of affiliation with a political party, any person duly elected to its membership, and it is further

Resolved, that the President of this Association appoint a special committee who shall appear before the Assembly or its Judiciary Committee and take such action as may in their judgment be necessary to safeguard and protect the principles of representative government guaranteed by the Constitution, which are involved in the proceedings now pending



Committee of the Assembly This is certainly a matter of sufficient importance to require the Association carefully to deliberate and investigate before it takes a stand and proclaims to the State and Nation any such doctrines of constitutional practice or law as these preambles and resolutions embody and propose to enunciate with our approval and endorsement There is no likelihood that the accused Socialist Assemblymen will not have a fair, open and impartial hearing, they proclaim in the press somewhat defiantly that they have ample funds for their defence, a number of lawyers have offered to be their champions; they have numerous sympathizers, many of whom do not know the facts, and there is no occasion or call for this Association tonight to criticize the Assembly and take action tending to discredit a branch of the Legislature and prejudge its action

At the outset, we should, it seems to me, have before us the resolutions which were actually passed by the Assembly and which have caused all this agitation. They have not yet been read although copies have been distributed No one, however, has challenged the facts stated in the recitals. We must accept them as true including the fact that these Socialists are members of the Socialist Party of America. The resolutions adopted by the Assembly and their recitals of fact are as follows:

Whereas, Lous Waldman, August Claessens, Samuel A. DeWitt, Samuel Orr and Charles Solomon are members of the Socialist Party of America;

And whereas, the said Socialist Party did at its official party convention, held in the City of Chi-

cago, Ill., in the month of August, 1919, declare its adherence and solidarity with the revolutionary forces of Soviet Russia and did pledge itself and its members to the furtherance of the International Socialist Revolution,

And whereas, by such adherence and by such declaration made by the said party, the said party has endorsed the principles of the Communist International now being held in Moscow, Russia, which International is pledged to the forcible and violent overthrow of all organized governments now existing,

And whereas, section 5 of Article II of the Constitution of the Socialist Party of America provides that each member of the Socialist Party of America must subscribe to the following "In all my political actions while a member of the Socialist Party, I agree to be guided by the constitution and platform of that party,"

And whereas, section 13, subdivision a, of the State Constitution of the Socialist Party of the State of New York provides "A member may be expelled from the party or may be suspended for a period not exceeding one year for the following offenses — for failing or refusing when elected to a public office, to abide and carry out such instructions as he may have received from the dues-paying party organization or as prescribed by the State or National Constitution,"

And whereas, such instructions may be given by an executive committee made up in whole or in part of aliens or alien enemies owing allegiance to governments or organizations inimical to the interests of the United States and the people of the State of New York,

And whereas, the national convention of the Socialist Party of America held at St Louis from about April 7, to about April 14, 1917, did duly

adopt resolutions that the only struggle which would justify taking up arms is the class struggle against economic exploitation and political oppression, and particularly warned against the snare and delusion "of so-called defensive warfare," and such resolutions further provided "as against the false doctrine of national patriotism we uphold the ideal of international working-class solidarity",

And whereas, the Socialist Party of America did urge its members to refrain from taking part in any way, shape, or manner in the war and did affirmatively urge them to refuse to engage even in the production of munitions of war and other necessities used in the prosecution of the said war, and did thereby stamp the said party and all its members with an inimical attitude to the best interests of the United States and the State of New York,

And whereas, the said Louis Waldman, August Claessens, Samuel A. DeWitt, Samuel Orr and Charles Solomon, members of the Socialist Party of America, having been elected upon the platform of the Socialist Party of America, have thereby subscribed to its principles and its aims and purposes against the organized government of the United States and the State of New York, and have been actively associated with and connected with an organization convicted of a violation of the Espionage Act of the United States.

Therefore, be it resolved that the said Louis Waldman, August Claessens, Samuel A. DeWitt, Samuel Orr and Charles Solomon, members of the Socialist Party, be and they are denied seats in this Assembly pending the determination of their qualifications and eligibility to their respective seats; and be it further

Resolved that the investigation of the qualifications and eligibility of the said persons to their respective seats in this Assembly be and it hereby

is referred to the Committee on Judiciary of the Assembly of the State of New York to be hereafter appointed, and that the said committee be empowered to adopt such rules of procedure as in its judgment it deems proper, and that said committee be further empowered to subpoena and examine witnesses and documentary evidence and to report to this body its determinations as to the qualifications and eligibility of the said Louis Waldman, August Claessens, Samuel A. DeWitt, Samuel Orr and Charles Solomon, each of them respectively, to a seat in this Assembly

This resolution was adopted in the Assembly by a vote of 140 to 6; and the Assembly yesterday by a vote of 71 to 33, that is by a vote of more than two-thirds of those voting, refused to reconsider their decision.

I submit that if the Assembly had before it any such charges against a member or members as those recited in its resolutions, it was not only its privilege but its duty to refuse to seat the accused members pending an investigation by the Committee on Judiciary, or to suspend them if already seated. It is indisputable that the Assembly is the sole judge of the qualifications of its members. Our State Constitution has so provided practically since 1777 and expressly since 1821, one hundred years ago. It further expressly prescribes that every member of the Legislature shall take and subscribe an oath solemnly swearing or affirming that he will support the Constitution of the United States and the Constitution of the State of New York, and a similar oath is prescribed by the National Constitution requiring the members of the several state legislatures

to support that Constitution. It is certainly not an arbitrary or untenable or un-American conclusion that members of the Socialist Party of America, professing the doctrines recited in the resolutions of the Assembly, cannot truthfully, honestly, or properly take the constitutional oath so prescribed, and that it would turn this oath into a travesty to permit it to be taken in form by a revolutionary Socialist or a Bolshevik who did not believe in the State and National Constitutions and did not intend to support them, or permit such a person to act as a member simply because he had been allowed to take the oath and had thereby perjured himself. The oath was provided for the very purpose of assuring a Legislature composed wholly of men intending in good faith to support the State and National Constitutions. As long as that express Constitutional qualification remains, it must be lived up to according to its letter and spirit. And I affirm that an elected member who cannot truthfully swear or affirm to support the Constitution or who has falsely taken his oath of office is *ipso facto* disqualified, as he should be.

I venture to challenge the declaration contained in these proposed resolutions now before the Association that the suspension of these five Socialists because of their affiliation with a disloyal and revolutionary political party is un-American and that it would destroy the rights of minorities or the very foundations of representative government. I further challenge the soundness and logic of the proposed declaration, express or implied, that personal unfitness is the sole ground upon which the As-

sembly may act, and that it must under the Constitution seat and allow to legislate for the people of the State an adherent to and representative of a party the doctrines of which are revolutionary, unpatriotic, disloyal, dangerous and subversive of our constitutional institutions. I profoundly believe and beg you carefully to weigh that you may immeasurably impair the future prestige and usefulness of this Association, as a body of trained lawyers familiar with constitutional history and practices, if you now endorse any such declaration as is proposed in the recitals to the resolutions before you, to the effect that this Association is unalterably opposed to any action by the Assembly excluding a person duly elected to its membership because of party affiliations with any political party, even if that party be a treasonable and revolutionary organization. You are urged to take this grave step and establish this dangerous precedent before the Assembly has even heard the evidence, debated the question and decided the merits. Would we not be hastily and ill-advisedly prejudging the whole question, and would not our action encourage organizations in our midst who are striving to destroy the American system of republican government and to pull down the economic structure upon which our future welfare and prosperity will depend? We lawyers ought not to lay ourselves open to just reproach for hasty and ill-advised action. On the contrary, we ought consistently to support the Constitution as it has been written for generations of Americans and uphold the hands of our representatives.

Of course, it may be that the investigation that is to begin tomorrow morning before the Judiciary Committee of the Assembly will show that the suspension of the five members was unjustifiable or unwise politically speaking and that the facts and grounds alleged and assumed in the preambles to the resolutions adopted by the Assembly on January 7th cannot be proved. Let us hope that may be so. But in the meantime, we ought to wait and hear the evidence before we rush to condemn in such terms as this resolution proposes the representatives of the people of the State of New York in the Assembly, for they were our representatives and our judges when they voted 140 to 6 to suspend the five members until the very serious charges against them could be duly and regularly investigated and when yesterday they voted 71 to 33 not to reconsider their prior action.

If I understand the situation correctly, a committee of the Legislature during the past eight months has been investigating the activities, if not the conspiracies, of the Socialists, Bolsheviks and Anarchists in our midst. The evidence so far published indicates a danger and menace to our institutions, so grave, indeed, that the National Government has had to arrest hundreds of agitators. The Attorney-General of the United States asserts that there has been a country-wide conspiracy to overthrow our National and State Governments, and this conspiracy is probably nowhere more active or vicious or dangerous than in the City and State of New York. Reports submitted to The Union League Club of the City of New York during the

year 1919, which I hold in my hand and which were approved by the Club, show the extent and reality of the menace and danger. Indeed, it was in response to a resolution of that Club adopted last March that the Legislature appointed the so-called Lusk Committee, which has been at work for seven or eight months. The Lusk Committee is about to report. The Assembly may know facts from that committee and from the Attorney-General of the State unknown to us, and there may be proofs supporting their conclusion and judgment that these five men should not be permitted to sit with loyal and patriotic representatives and legislate for the people of the State pending a full hearing and investigation of their fitness, loyalty and Americanism, and especially of their ability truthfully to take the constitutional oath of office, which goes to the very roots of their qualifications and eligibility. No sound principle of Constitutional Government compels the Assembly to admit or permit to legislate these five avowed and defiant Socialists pending such a hearing and investigation.

From the beginning of our State and National Governments, it has been recognized that it was necessary to vest in all legislative bodies exclusive power to judge of the qualifications of their members, that this was essential to the performance of their high functions, and that the safety of the State and of the republican form of government required it. The history of England as well as of the colonies had shown the founders of our State Governments that to make a legislative body the sole judge of the qualifications of its members



might open the door to oppression of minorities and possible tyranny, or unrepresented constituencies, but whilst recognizing that this power was capable of abuse, as all powers of government are capable of being abused, they nevertheless determined that the best interest of the State would be served by vesting the power and responsibility in each house of the Legislature uncontrolled and uncontrollable, leaving it to the people to deal subsequently with any Legislature that abused this power

Now, we are asked, as I view it, to endorse the proposition that the power of our Legislature in this respect is constitutionally limited to questions of personal fitness or morality, and we are urged to stand before the public for the proposition that it is wholly immaterial that a member whose qualifications are challenged is affiliated with a revolutionary organization that seeks and is pledged to overthrow the American constitutional system! We are asked as American lawyers, familiar with American constitutional history and its sources, to proclaim to the public as a fixed or fundamental principle of our Constitutional Government that the power of the Legislature is so limited and circumscribed that it can only investigate the personal character or personal behavior of elected members, and must admit them to membership and to participation in legislation, no matter how revolutionary, unpatriotic and dangerous may be the platform upon which they were elected and no matter how patently false would be their oaths to support the State and National Constitutions they were pledged

to seek to destroy. I protest against the Association committing itself to any such view because I profoundly believe that it is both wrong and unsound

There remains the contention that the Assembly, in any event, did not have constitutional power to suspend pending a hearing of charges, but that it should have admitted these members and allowed them to participate in all legislative functions until the Judiciary Committee could report. That seems to me equally untenable. I had supposed that under our Constitution either house of the Legislature, if it saw fit and believed the emergency so required, could refuse to seat a member or expel him without any hearing whatever. Of course, such a procedure would be arbitrary and most unlikely to be pursued. But the power to do so was vested in the Legislature and intentionally so.

Mr President and members of the Association: I earnestly plead with you not to act precipitately in this matter. Wait at least until the evidence is produced so that you can judge of the merits and whether or not the preambles to the resolutions adopted by the Assembly are well founded. Our Executive Committee or one of our standing committees can, if they deem it necessary, investigate the history of the constitutional provision and the precedents thereunder, as well as the evidence against the accused Socialists. We are facing a great emergency and a great crisis in our history, and let us not give encouragement and comfort to men who deserve it not, and who are plotting to destroy American institutions. Surely, the Associa-

tion need not enroll itself as supporters of men who are pledged to agitate for the overthrow of our Governments. This is no time to compromise with revolution. The inevitable interpretation of the proposed resolutions, if adopted in their present form, will be that we think the members of the Socialist Party of America are fit members of our legislative bodies. It is one thing for sympathetic individuals to help the accused Socialists with money or counsel if they need either, so as to assure them a fair and impartial hearing, which they are certain to have; it is quite a different thing for this great Association of the Bar to champion their cause when they have competent counsel and are assured of adequate protection, and in so doing to proclaim the clearly erroneous constitutional doctrine recited in the proposed resolutions before you.<sup>1</sup>

<sup>1</sup> After a long debate, the following amended resolutions were adopted by a vote of 174 to 117 (the amendments being italicized)

Whereas, this Association regards with a deep sense of anxiety the action of the Assembly of this State in suspending from its membership the five members of the Socialist Party who were duly elected members of the Assembly at the last election, and

Whereas, any attempt by a majority to exclude from the Legislature those who have been duly elected to its membership merely because of their affiliation with a political party, *when seeking by constitutional and legal methods to bring about any change in our Constitution and laws*, is un-American, and, if successful, must destroy the rights of minorities and the very foundations of representative government, and

Whereas, the five members of the Socialist Party now suspended from membership are charged to be unfit for membership in the Legislature because of their membership in the Socialist Party, and not because of any personal unfitness, it is hereby

Resolved, that this Association is unalterably opposed to any action by the Assembly excluding from its membership because of affiliation with any political party, *when seeking by constitutional and legal methods to bring about any change in our Constitution*

and laws, any person duly elected to its membership, and it is further

Resolved, that the President of this Association appoint a special committee who shall appear before the Assembly or its Judiciary Committee and take such action as may in their judgment be necessary to safeguard and protect the principles of representative government guaranteed by the Constitution which are involved in the proceedings now pending

It will be noticed that the amendments fundamentally changed the effect of the second recital and the first resolution as proposed, and that the resolution as amended declared a proposition and principle that the Assembly had not in any way challenged or violated. The charges against the five Socialists were plainly and unambiguously recited in the preambles to the resolutions adopted by the Assembly on January 7th, 1920, and showed that they were accused of *not* "seeking by constitutional and legal methods to bring about any change in our Constitution and laws." *The Assembly suspended these members because they belonged to a party that was then seeking to destroy our Governments by unconstitutional and illegal methods.* That fact was perfectly clear. The resolution finally adopted by the Association was essentially different from the one proposed by Judge Hughes, and it could not fairly or properly be interpreted as criticizing the attitude of the Assembly, if we assume, as we should, that the recitals in the Assembly's resolutions truly stated the grounds upon which it had acted

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## SUSPENSION OF SOCIALISTS BY THE NEW YORK ASSEMBLY<sup>1</sup>

THE Committee on Political Reform deems that it is called upon to report at this meeting in regard to two extraordinary recent public events of profound and permanent importance to the Nation and State, the one being the deportation by the National Government of dangerous aliens under the act of Congress of October 16th, 1918, and the other the suspension by the New York Assembly of five Socialists pending an investigation by its Judiciary Committee of their qualifications to serve as members of our Legislature and to participate in enacting laws for our government. These matters are peculiarly within the province of The Union League Club. Not only was the primary purpose of its original organization during the Civil War, as expressly recited in the act of incorporation, "to promote, encourage and sustain, by all proper means, absolute and unqualified loyalty to the Government of the United States," and all the traditions of the Club cluster around that national and patriotic purpose and service, but it was in great measure because of action taken by the Club in 1919 that the events referred to have occurred. A special

<sup>1</sup> Report prepared as chairman of the Committee on Political Reform of The Union League Club of New York and presented at a meeting held on February 12th, 1920

responsibility, therefore, seems to rest upon us to consider current criticisms and agitation in respect of these two matters

Pursuant to a resolution adopted at the annual meeting held in January, 1919, a special committee of our members was appointed, of which Mr. Archibald E. Stevenson was elected Chairman, and this committee was charged with the duty on our behalf of studying what is known generally as the Bolshevik movement. This special committee reported to the Club at length at the February, March and April meetings. The thorough and exhaustive investigation made by its members resulted in alarming disclosures as to the existence among us of a systematic propaganda, if not conspiracy, for the overthrow of constitutional government, the existing basis and foundations of society, and the ownership of private property. These reports laid before the Club evidence of organized agitation against the American constitutional system and established forms of government, National and State, as well as against national patriotism and loyalty, for which so-called internationalism and class interests and hatreds were to be substituted.

The first report dated February 13th, 1919, pointed out that the Socialist Party of America was not a political party in the ordinary sense of the term, but a militant, revolutionary, propagandist organization, expressly committed to social revolution as its end and aim, and that, in common with what is known as Bolshevism, it was operating upon a platform of internationalism, the solidarity of the working classes of the world, sympathy with revo-

lutionary Russia, and the establishment of Bolshevism or Soviet Government in this country.

The second report of the special committee dated March 13th, 1919, submitted evidence tending to prove the existence and functioning of a conspiracy against our governmental institutions and the revival of intensive revolutionary Socialism as an aftermath of the Great War. This report declared that the purposes of the radical agitators in the United States were similar to those of their European comrades, and that the propaganda of Socialists was rapidly increasing and fomenting unrest and discontent among large bodies of the American people. The special committee thereupon recommended and the Club adopted a resolution in the following language:

Resolved that the Committee on the Study of Bolshevism be and it hereby is directed to present to the Senate and Assembly of the State of New York the recommendation of the Union League Club that a joint legislative committee should be appointed, with all necessary powers to investigate the tendencies, ramifications and activities of the Bolshevik or revolutionary movement in this State with a view to the enactment of such legislation as may be necessary to protect the government of the State and to insure the maintenance of the constitutional rights of its citizens.

It was in compliance with this resolution of the Club that the Legislature appointed the Joint Legislative Committee known as the Lusk Committee, which during the greater part of the year 1919 conducted an exhaustive investigation of the subjects of Bolshevism and Socialism in all their phases.

The disclosures published from time to time as a result of the investigations of the Lusk Committee were astounding and alarming, and to many who followed its work were convincing that there existed a grave menace to our forms of government, national and state, to society and to the whole system of private property, and that an intensively active revolutionary propaganda was being conducted among the people seeking to bring about the overthrow of our governmental systems and society as now existing.

The special committee made a third report, dated April 10th, 1919, in which it reviewed the activities in the United States of the Bolsheviks and the Russian Soviet Mission and the menace thereof to American institutions. Resolutions were thereupon unanimously adopted by the Club, calling upon the National Government to take immediate action to prevent the activities of the mission sent to this country by the Russian Soviet Republic and in every way to discountenance its attempt to gain diplomatic recognition, and directing the President and Secretary of the Club to send a copy of the report and resolution "to our diplomatic representatives at the Peace Conference in Paris, to the Attorney-General of the United States, and to every Senator and Representative in Congress, commending the questions presented to their immediate consideration."

These reports of the special committee and the resolutions of the Club are now recalled and emphasized because it is essential that we should appreciate that the acts of the National Government



in deporting dangerous aliens and of the New York Assembly in suspending the five Socialists elected to its membership were natural effects or consequences of movements initiated and promoted by the Club, and hence that we should recognize the eminent fitness and propriety, if not obligation, of our taking some note of current criticisms

Your committee would further emphasize the fact that the situation as it developed last year was and is now quite unparalleled in our history, and very much more critical and dangerous than any movement or propaganda in this country since the days of the Alien and Sedition Act of 1798 enacted during the administration of President John Adams. It would be quite immaterial, even if it were the fact, that the acts of the National Government and of the New York Assembly, now criticised, were unprecedented, for it surely must be indisputable that extraordinary and unprecedented events or dangers may call for extraordinary and unprecedented measures of protection and repression.

As Senator Charles Sumner said in the United States Senate in 1863, discussing its power to deny a duly elected Senator his seat pending the determination of charges against him of disloyalty:

It is said that the proposition now before the Senate is without a precedent. New occasions teach new duties, new precedents are to be made when the occasion requires. Never before in the history of our government has any person appeared to take a seat in this body whose previous conduct and declarations, as presented to the attention of the Senate, gave reasonable ground to distrust his

loyalty That case, Sir, is without a precedent. It belongs, therefore, to the Senate to make a precedent in order to deal with an unprecedented case. The Senate is at this moment engaged in considering the loyalty of certain members of this body, and it seems to me it would poorly do its duty if it admitted among its members one with regard to whom, as he came forward to take the oath, there was a reasonable suspicion

As to the deportation of aliens found to be dangerous and the criticism which has been indulged in by many, and particularly in a recent declaration signed by bishops and ministers, it should be only necessary to state that the provisions of the act of Congress of October 16th, 1918, under which the recent action of the National Government was taken, are constitutional, and that in so far as the statute denies a judicial hearing as distinguished from an administrative investigation (which is quasi-judicial), it is fully supported by a long series of decisions of the Supreme Court of the United States to the effect that the denial of a judicial hearing to aliens to review the action of administrative or executive officers in excluding or deporting them is not at all inconsistent with the fundamental principles of justice, as those principles are embraced in the American system or within the American conception of due process of law. See, for example, the cases of *Tang Tun v. Edsell*, 223 U. S. 673, 681-2, and *Low Wah Suey v. Backus*, 225 U. S. 460, 467, both of which decisions were unanimous. Moreover, it seems to your Committee on Political Reform to be plainly necessary and a wise policy of practical government to vest exclu-

sive authority in federal executive officers to deal with objectionable or dangerous aliens.

The absolute right of a government to exclude or deport objectionable aliens is well established in international law, and the settled doctrine is known as the *Droit de Renvoi*. All that justice dictates or could reasonably require under our system of human liberty regulated by law is that the hearing before executive officers, or on appeal to the Secretary of Commerce and Labor, should be fairly conducted with opportunity to adduce evidence and that there should be no manifest abuse of the discretion committed to them by the statute. "Furthermore" (as Mr. Justice Holmes declared, delivering the unanimous opinion of the Supreme Court in the case of *Tiaco v. Forbes*, 228 U. S. 549, 557), "the very ground of the power in the necessities of public welfare shows that it may have to be exercised in a summary way through executive officers."

The act of Congress of October 16th, 1918, authorizes the deportation of "aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the Government of the United States," and the provisions for a hearing before executive officers follow similar provisions enacted by Congress in 1894, that is, twenty-six years ago, which have been repeatedly sustained by the Supreme Court of the United States, so that the constitutional power of Congress to enact the statute of 1918 ought to be considered as no longer open to question.

Your Committee has before it in preparing the present report a copy of a letter to the Senate and House of Representatives from the Secretary of State of the United States, dated October 27th, 1919, entitled "A memorandum on certain aspects of the Bolshevik Movement in Russia." Mr. Lansing deemed it his official duty to commend to the careful consideration of the Congress the detailed information which the report contained, and he stated among other things as follows:

The study which has been made of the Bolshevik movement, some of the results of which are furnished herewith, shows conclusively that the purpose of the Bolsheviks is to subvert the existing principles of government and society the world over, including those countries in which democratic institutions are already established. The results of this exercise of power, as shown by the documents presented in the accompanying memorandum, have been demoralization, civil war, and economic collapse.

On December 22d, 1919, the Postmaster General of the United States filed in the Supreme Court of the District of Columbia an answer to the suit of the "New York Call," the organ of the Socialist Party, which was seeking redress for its exclusion from the mails. In this answer he asserted that there existed an organized propaganda to discredit and impede in every way the National Government in the prosecution of the war, "with the purpose of defeating the objects for which the Government was spending billions of dollars and was called upon to sacrifice thousands of lives "

The Postmaster General further declared, that

"the publications forming this propaganda in many cases subtly guard their utterances in the attempt to avoid the criminal liabilities of their acts under said Espionage Law," and that "they have, nevertheless, united in publishing the same character of matter, whether partially true or entirely false, and daily accomplished results in clear violation of law. Among these publications is that of the relator, the 'New York Call'."

In this answer is set forth part of the proofs, consisting of extracts from matters published in the "New York Call," which is the recognized and official organ of the Socialist Party throughout the country. A few of these extracts may be quoted as examples. Thus, the issue of November 26th, 1918, two weeks after the Armistice of November 11th, 1918, reported a meeting of Socialists held at the Madison Square Garden at which there was rioting, and stated that the Garden rang with cheers for "revolvers," and that the following resolution was adopted:

We pledge our support to the revolution that began in Russia in 1917 and which has since spread to Bulgaria, Austria, and now to Poland and Germany, and which the united power of the reactionary and capitalist world could not prevent from spreading to other countries. We shall work here with equal devotion and equal fervor until the industrial republic of America takes its place among the industrially free nations of the world.

In the issue of January 1st, 1919, Mr. Morris Hillquit, the well-known Socialist, who, it is reported, acted during 1919 as counsel for the legal department of the representatives in America of the Russian Soviet Republic, issued a New Year's greeting

to his fellow Socialists, part of which read as follows:

To the 150,000,000 proletarians of factory and field in all Russian territories, the pioneer-warriors for human rights and human dignity, for liberty and bread May the new year bring them unity and power, victory and peace, and deliverance from all reactionary onslaughts, domestic and foreign. . .

To the workers of the United States, the rear-guard in the onward march of revolutionary international labor May the new year bring them enlightenment and progress, and may they conquer for themselves that position in the government of their country to which their numbers and economic importance entitle them. . .

The coming year will probably mark the turning point in human history. It will be a decisive year for international Socialism. It will bring us great triumphs and conquests, but also hard struggles and trials. Let us meet them like men and like Socialists, comrades — loyally, courageously and unflinchingly.

And in the issue of September 5th, 1919, we find the following:

We, the organized Socialists of America, declare our solidarity with the revolutionary workers of Russia in the support of the government of their Soviets, with the radical Socialists of Germany, Austria and Hungary in their efforts to establish working class rule in their countries, and with those Socialist organizations in England, France, Italy, and other countries, who, during the war as after the war, have remained true to the principles of uncompromising international socialism.

The great purpose of the Socialist Party is to wrest the industries and the control of the Government of the United States from the capitalists and

their retainers It is our purpose to place industry and government in the control of the workers with hand and brain, to be administered for the benefit of the whole community. . . .

Long live the international Socialist revolution, the only hope of the suffering world!

No one can read the answer so filed by the Postmaster General of the United States as recently as December 22d, 1919, without being profoundly convinced that most dangerous propaganda and criminal conspiracies existed during the war to impede and thwart the Government, that prominent in these revolutionary movements was the organization known as the Socialist Party of America, that it was then and is now affiliated with the Russian Bolsheviks and other revolutionaries, that its end and aim are to overthrow our forms of government and the foundations of American society, by force if necessary, and that the Socialist Party of America was and is a seditious and treasonable organization.

More recently the Attorney-General of the United States issued a pamphlet entitled "Red Radicalism as described by its own Leaders . . . including various communist manifestos, constitutions, plans and purposes of the proletariat revolution, and its seditious propaganda." This pamphlet contains the fullest justification of the measures which the responsible officers of the National Government have deemed it imperatively necessary to institute for the deportation of hundreds of revolutionary aliens agitating in our midst for the overthrow of the government that was protecting and

harboring them and the destruction of the society that was nurturing and blindly tolerating them. The Attorney-General of the State of New York has within the past week testified before a committee of Congress that there were at least 300,000 objectionable and dangerous radicals in the City of New York — right here at our very doors — and all who know Mr. Newton will readily affirm that he would not make such a statement except upon competent evidence, that he is not an alarmist, and that he is not at all likely to imagine or exaggerate the situation.

Your Committee earnestly submits that this Club and all patriotic Americans should extend their unqualified support to the officers of our National Government who have had and still have the courage and steadfastness to continue the performance of the task and duty of ridding the country of all dangerous aliens plotting revolution and the destruction of our society and forms of government.

The suspension of the five Socialists who were elected as members of the Assembly has created much difference of opinion, due in many instances to entire ignorance of the facts and of the nature of the questions involved

Your Committee will not attempt in this report to deal fully with the varying and shifting aspects of the questions of constitutional and parliamentary law which have been raised and discussed by those who have challenged the action of the Assembly without waiting to learn the evidence. It is deemed sufficient at this time to discuss only the essential elements of the situation, namely, as to the power



of suspension and as to the qualifications of the five accused Socialists.

The Constitution of the State of New York has provided ever since 1777 and still provides that the Assembly shall be the judges of the qualifications of its own members. It has always been recognized and heretofore assumed to be settled beyond dispute, as a necessary and sound rule of parliamentary law, that legislative bodies were and ought to be the sole and exclusive judges of the qualifications of their members. The Constitution of the United States so provides, and similarly every State Constitution expressly or impliedly. This power is, of course, liable to abuse as most powers are; but the theory of our legislative system is that it would be most objectionable, if not dangerous to our liberties, to vest any supervisory power as to the qualifications of legislators either in the judicial or the executive department. Each house of our Legislature in the exercise of the power, right and duty so to judge of the qualifications of its own members is accountable only to the electorate, and this has always been the established principle and rule, not only in this country but in England. Any other rule would tend to destroy the independence of the legislative branch of the Government as the law-making representative of the electorate.

Nor should there be any doubt, according to settled rules of parliamentary law, that the power of either house to judge of the qualifications of its members includes the power to deny an elected member a seat in the body at the outset, or to suspend him pending investigation of charges that

he is disqualified, or to expel him for any cause whatever deemed sufficient in the discretion of the legislative body itself. It is an erroneous view that there is any express or implied limitation upon the power of either house of the Legislature in this respect. Their power is unlimited and exclusive; they may suspend or expel for any cause deemed by them sufficient, and responsibility and accountability for their action are solely to the electorate of the State. The fact that an elected member, for example, has taken and filed the constitutional oath of office does not deprive the Assembly of its power either of suspension or expulsion. In the case of the five Socialists suspended by the Assembly they had subscribed the oath of office, and filed it with the Secretary of State before the Assembly of 1920 had even met. Under our Public Officers Law (sec. 10) a duly elected member of the Assembly can file his oath at any time before the body convenes. Hence, the argument based on the fact that the oath of office had been actually subscribed and filed, if sound, would enable any elected, though disqualified, member to forestall action by the Assembly and deprive it of the power to exercise its right, if not its duty, to refuse him a seat or to suspend him pending a hearing of charges of disqualification. Indeed, in final analysis the argument of those who are challenging the legal power of the Assembly is that in case of charges of disloyalty and sedition against an elected member, the house must either forthwith expel him without a hearing, or else allow him to sit and participate in legislation pending the investigation of his guilt or

innocence, no matter how strong the *prima facie* case against him may be!

The necessary limits of this report preclude a detailed refutation of the claim so loudly made that the action of the Assembly in suspending the five Socialists is illegal and unprecedented. It may suffice for present purposes to quote from Cushing's Law and Practice of Legislative Assemblies, a recognized authority, as follows (sec 627):

Analogous to the right of expulsion is that of suspending a member from the exercise of his functions, as such, for a longer or shorter period, which is a sentence of milder character than the former, though attended with somewhat different effects; for during the suspension the electors are deprived of the services of their representative, without power to supply his place; but the rights of the electors are no more infringed by this proceeding than by an exercise of the power to imprison.

Although we do not intend in any manner to prejudice the issue now pending before the Judiciary Committee of the Assembly, or to anticipate the decision on the merits, it is, nevertheless, fitting and proper briefly to review and consider whether the fact that an elected member of our State Legislature belongs to, or is affiliated with, a disloyal and revolutionary organization is or is not a sufficient ground for his suspension and expulsion. The argument advanced by certain distinguished critics of the Assembly seems to be (1) that the mere subscribing and filing of the constitutional oath deprived the Legislature of all power to suspend, however insincere or false that oath might be, (2) that a member of a revolutionary organization is

not chargeable with responsibility for the platform upon which he was elected, provided "the declarations in the platform have never passed beyond the expression of a belief and have not been followed by overt acts," and that "criminality does not consist in mere intention, but in intention carried out by hurtful acts," and (3) that "we are not engaged in the trial of the Socialist Party of America." This defense of the five Socialists seems to your Committee to be untenable in all its aspects.

The Framers of the Constitution of the United States expressly provided in Article VI thereof that "the members of the several state legislatures . . . shall be bound by oath or affirmation to support this Constitution", and it was plainly their intention to provide for all time and under all circumstances that every state legislature should be composed and constituted solely of loyal Americans "bound by oath or affirmation to support this Constitution." They foresaw with prophetic vision that organizations were certain to arise whose object would be revolutionary and whose aim would be the overthrow of the constitutional system they were establishing, and they intended that no such organization should be allowed under any pretext to take root, or to place their agents, in our halls of legislation, whether of Congress or of any State. They were not providing for a mere form; they were providing for a bulwark against disloyalty; and they intended that compliance should not be sufficient in the mere letter of an oath taken in disregard of its spirit and substance. No one was to be allowed to sit in an American state legislature

who could not truthfully and unreservedly swear, and thereby be actually bound in conscience, to support the Constitution of the United States. In the light of and in obedience to that patriotic provision, the Constitution of the State of New York, Article XIII, expressly provides that before any member of the Legislature shall enter upon his duties he shall solemnly swear or affirm that he "will support the Constitution of the United States and the Constitution of the State of New York."

The proposition that merely going through the form of taking the constitutional oath purged the five Assemblymen of their disloyalty and entitled them to sit as qualified members of the Assembly until expelled after the hearing of charges, is unsupported by anything that has been so far advanced by the champions of the accused members. Such is not the rule. They refer to precedents in Congress which, when examined, will be found not to uphold their contentions, and other precedents not cited by them clearly refute such contentions. The language of Senator Sumner in 1863, which we have quoted above, ought of itself to suffice. In 1867 the Committee on Elections of the House of Representatives reported its opinion among other things —

that any specific and apparently well-grounded charge of personal disloyalty made against a person claiming a seat as a member of this House ought to be investigated and reported upon before such person is permitted to take the seat.

And in 1868 the same committee of the House of Representatives reported that —

It was inherently implied in every constitutional provision under which the House had its existence that no man should be qualified to sit as a member who had not the indispensable qualification of loyalty to the Government

Surely, the sober second thought and the common sense of this community must convince all who will reflect upon the question that the above quotations express the sound and true view and that it would be illogical and unreasonable in the extreme to contend that the mere form of subscribing and filing an oath was a full compliance with the requirement of the provisions of our National and State Constitutions

The proposition that the five Socialists are not to be deemed disloyal and disqualified for the reason that the declarations and platform of their revolutionary organization have not yet been followed by overt and hurtful acts, whatever their intention may be, need only be answered by the assertion that the laws of the State do not permit revolutionary and disloyal propaganda to go unchecked and unpunished simply because it has not yet been followed by force and the use of bullet and torch. It had been supposed that this question was settled beyond further controversy or misunderstanding by our Penal Code and the decisions of the Court of Appeals. The members of this Club will readily recall the case of the *People v. Most*, 171 N. Y. 423, which involved the prosecution of an Anarchist and Socialist, named John Most, who was indicted for publishing an inflammatory article the day President McKinley was assassinated.

Most had not perpetrated what the champions of the five Socialists would term "overt" or "hurtful" acts: he had only published anarchistic or socialistic doctrine. The leading New York Socialist, Morris Hillquit, championed and defended Most, and contended that, under the Constitution and laws of this State, Most could not be punished for his publication; but the Court of Appeals unanimously overruled the contention and affirmed the judgment of conviction, declaring, as it had before, that no one could foresee the consequences which might result from revolutionary language, and added:

The courts cannot shut their eyes to the fact that there are elements in our population, small in number but reckless and aggressive, who are ready to act on such advice and to become the assassins of those whom the people have placed in authority.

All courts and commentators contrast the liberty of the press with its licentiousness, and condemn as not sanctioned by the constitution of any state, appeals designed to destroy the reputation of the citizen, the peace of society, or the existence of the government.

Referring to the assertion that the Socialist Party of America is not on trial, the sufficient answer must be that the contrary is the fact and that that organization is now on trial before the Judiciary Committee of the Assembly. The Judiciary Committee of the Assembly is to investigate and report, among other things, whether the Socialist Party of America is or is not a revolutionary and disloyal organization and a menace to our political institutions, and, if so, then whether the accused

members belong to or are affiliated with that organization. It is manifest, therefore, that one of the fundamental issues before the Judiciary Committee of the Assembly is necessarily as to the character of the party to which the resolutions adopted on January 7th recited as matter of fact that the accused Assemblymen belonged, and which fact they did not challenge or deny.

Your Committee submits that if the Assembly had reason to believe the facts recited in its resolutions adopted on January 7th suspending the five members, and in the remarks then made by the Speaker of the Assembly, which tended to show disqualification, it was not only within the power and discretion of that body, but their plain patriotic duty, to the State and Nation, to suspend the five Socialists until there had been a hearing before the Judiciary Committee of the Assembly as to their qualifications and as to whether they did or did not belong to a revolutionary organization seeking to overthrow our forms of Government, National and State, and, furthermore, that the Assembly was not bound by any rule of order or law or by any principles or precedents of representative or constitutional government to allow the accused members to occupy their seats and participate in legislation pending investigation as to their loyalty and consequent qualification to serve as members of our Legislature and make laws for us to obey

In conclusion, your Committee ventures to express the hope that the issues involved in the two matters discussed in this report will not be allowed to become the subjects of petty partisan politics,



but will be treated from a higher and an exclusively patriotic standpoint. These questions are of far-reaching importance and of vital permanent interest. The deportation of dangerous aliens has been ordered by a Democratic administration, and has been generally upheld by Republicans. It is true that a number of Democratic politicians, and conspicuously the National Chairman of the Democratic Party, are seeking to make political capital out of the suspension of the five Socialists, by criticizing the Assembly for its action. In the long run, however, it will turn out to be very poor politics to give comfort and encouragement to enemies of American institutions, or to embarrass party adversaries whilst engaged in the performance of an imperative duty to the people of the State to rid the Legislature of disloyal members, if the charges against the five Socialists are ultimately found, after a fair hearing, to be sustained by the evidence adduced.<sup>1</sup>

<sup>1</sup> After the reading of the above report, the following resolution was adopted

"Resolved that the report of the Committee on Political Reform be printed and sent to the members of the Club, and that a special meeting of the Club be called for next Thursday evening, February 19, at 8 30 P M, to consider and act upon said report "

## DEPORTATION OF ALIENS AND SUSPENSION OF FIVE SOCIALISTS <sup>1</sup>

(CONTINUED)

ON behalf of the Committee on Political Reform, I desire to supplement its report of February 12th with some additional remarks. I shall not read that report unless requested by the meeting because it was read at the regular monthly meeting last Thursday evening, and a copy has been sent to each member. It is reasonable to assume that its contents are more or less familiar to all who are present at this meeting.

Your Committee believes that The Union League Club of New York should take action upon both of the subjects discussed in this report, and it hopes that its views will be approved. It was this Club that initiated the movement which brought about the appointment by the Legislature of the Lusk Joint Committee of Investigation, and it was undoubtedly its action in regard to the Russian Mission and Bolshevik activities that stimulated the Department of Justice of the United States to arrest and deport dangerous aliens under the Act of Congress of October 16th, 1918. For us now to remain silent and shirk responsibility in the face of the criticisms and clamor with which we are familiar, would invite just reproach and would be in

<sup>1</sup> Remarks at adjourned meeting of Union League Club of New York February 19th, 1920

conflict with the best traditions of the Club. We are not merely a social organization. We are dedicated to patriotic service and bound, so far as lies in our power, to promote absolute and unqualified loyalty to the Constitution and unwavering support of our Governments, State and National. Your Committee conceives that this Club has never had a clearer or a more imperative duty than the present one, and that it has never been called upon to consider more vitally important and urgent questions. We do not except even its splendid record during the Great European War, which called for so much patriotic devotion and sacrifice. Indeed, the members of your Committee are convinced that we are now menaced in State and Nation with a peril that may render vain all the unselfish services and noble sacrifices of the war — with a danger that threatens the subversion of American society and institutions — with a menace to the constitutional system which Washington, Franklin, Hamilton and the other immortal Framers founded. Repudiation of that system by our representatives in legislative halls, or the representatives of any class of our fellow citizens, should not be tolerated under any guise or pretext whatever and however denominated or masked or camouflaged under sentimental, philosophic, or humanitarian phrases. It was the intention of the Founders, declared in the Constitution of the United States, which we of this Club reverently regard as the gospel of our political faith, that no one shall be permitted to sit in an American legislative body who cannot truthfully and unreservedly take a solemn oath to support the Con-

stitution, and it is the patriotic duty of every class of our citizenship, rich or poor, fortunate or unfortunate, contented or discontented, to obey the letter and the spirit of that ever sacred covenant and command.

As to the action taken by the National Government in instituting proceedings to deport alien revolutionists, I shall not add to what is stated in the Committee's report. I shall assume that the criticisms and attacks upon the Department of Justice, even those by learned bishops and clergymen, are obviously and indisputably due in great measure to ignorance of the nature of the constitutional and governmental questions involved in the proceedings for the deportation of objectionable and dangerous aliens, or to emotional sentimentality

But as to the criticisms of the action of the New York Assembly in suspending the five Socialists, I ask your patient indulgence whilst I present some of the aspects of the problem we are facing, as it presents itself to your Committee. It is a problem which may generate incalculable mischief and injury to our society and institutions unless wisely and steadfastly faced and dealt with and unless we all recognize that a policy of further temporizing, tolerance and conciliation may be the height of folly and a wrong to ourselves and to those who are to follow us. We are still in duty bound to preserve and hand down to them unimpaired the political heritage forged for us by our ancestors

The year 1919 was full of momentous and startling events and disclosures. The patriotic fervor and exaltation of our people during the World War had

been followed by an aftermath of moral reaction, of virtual revolt on the part of the working classes, of widespread unrest and discontent, of intensive propaganda for social revolution and the overthrow of our governmental systems and the confiscation of private property. As a conspicuously patriotic and competent American has declared within the past two days — I refer to Herbert Hoover — every wind carried to our shores an infection of social disease, class hatred and revolutionary projects from the awful and terrible ferment in Europe. We in the State of New York were awakened from our sleep of tolerance and conciliation and from our apathy by the disclosures of the Lusk Committee to realize that right here in our very midst everything that we held dear was being undermined and imperiled by poisonous propaganda advocating the doctrines of the Bolsheviks in Russia and approving the frightful, brutal and bestial excesses of the Russian revolutionists. The National Government likewise was awakened the latter part of the year 1919, and stirred to action. Three great departments, the Department of State, the Department of Justice and the Department of Commerce and Labor, called the attention of the Congress and the American public to an intolerable and perilous condition of dangerous and seditious agitation. Hundreds of strikes for unreasonable demands threatened our whole economic structure. Concessions meant only increasing the appetite for more demands. The high wage scale, frequently fixed under the coercion of threatened terrorism, was steadily increasing to the ruinous point, whilst

labor was steadily decreasing its production. Class hatreds were being fomented. Thousands of avowed Socialists, who had been at heart disloyal and seditious during the war, were unmasking themselves in 1919 and seeking to stir up discontent among all classes of the working people by inoculating them with discontent and false and poisonous revolutionary doctrine. No one was systematically opposing them, and direct action was met by inaction. Apathy and lethargy were everywhere. The contagion was spreading and making gigantic strides. There are moral diseases and delusions, and they are highly contagious. There are mental epidemics. Never before had the danger to American institutions been so obvious to all who looked beneath the surface and into the facts, and never before had it been made so clear that our shelter and tolerance of the worst phases of Socialism were being abused under the pleas of political liberty and freedom of speech, and that if it were allowed to continue it might be our undoing.

Three weeks after the election last November, the Grand Jury of the County of New York indicted twelve Socialists for criminal propaganda in our midst, and among them was Bella Gitlow, who had sat last year as an Assemblyman elected by the Socialist Party, whose record had been one of continuous disloyalty, and who was recently convicted and sentenced to ten years' imprisonment. It was in thanking the Jury for its verdict against this Socialist that Mr. Justice Weeks declared that —

There must be a right in this organized State to protect itself. If citizens who accept the benefit of

an organized Government do not recognize that the Government that protects them can only be overthrown by lawful means, then it is difficult to see how civilization can be maintained.

And he then added.

He [Gitlow] took the oath as a member of the Assembly of the State to support the Constitution of the United States and of the State of New York. When he entered the Assembly he was fettered by that obligation of his organization which provided that he should be driven from it if he voted for an appropriation for military purposes or the war. Was that only the entering wedge for the destruction of the nation, to prevent it appropriating money to save itself from war, to hamstring it? It certainly seems so.

When, therefore, the Legislature of 1920 met on the 7th of January, it faced a condition of social ferment and revolutionary propaganda unprecedented in our history, and an emergency equally unprecedented called for prompt and unflinching action. Two days before, on January 5th, the Supreme Court of the United States had solemnly adjudged that the state of war with Germany still existed and called for and justified the exercise of the war powers of Congress. This pronouncement admonished the New York Legislature to bear in mind that the war was not yet over and that there should be no relaxation of patriotic watchfulness and precaution.

Five members of the Socialist Party of America had been elected in the City of New York to serve in the Assembly. Their loyalty to the Constitution, to the Republic and to the State was chal-

lenged When the Legislature actually convened, these five Socialists had taken the precaution to file their constitutional oaths in the office of the Secretary of State, so that any challenge of their qualifications in the Assembly before they took the oath was plainly impossible. In this respect our practice differs from the practice in Congress where the oath of office is administered in each house and challenges are then in order before the oath is taken. And our state practice differs also in the fact that the National Constitution draws a distinction between suspension and expulsion by expressly requiring a two-thirds vote for the latter.

Hence, our Legislature had either to seat the accused Socialists and allow them to participate in legislation and possibly by their votes defeat patriotic and necessary measures, or else deny them their seats pending a due and orderly investigation, and this latter course was adopted by a vote of 140 to 6.

It has been charged by the critics of the Assembly and the champions and defenders of these five Socialists that they were suspended without any definite accusation being made. But we have only to read the remarks of the Speaker and the resolution adopted by the Assembly on January 7th, to see that they completely explode any such pretense and refute any such contention, at least so it seems to your Committee. The charges, as stated by the Speaker and set forth in the resolution of suspension, were specific, unambiguous, clear and distinct I want to call your attention to the precise charges then made. There is much mis-



understanding upon this point Many believe or pretend to believe that the five Socialists were arbitrarily denied their seats and suspended without any charges being specified which would affect their personal qualifications to sit in the Assembly. The Constitution of the State of New York as well as the Constitution of the United States expressly prescribes that every member of the Legislature shall take an oath to support the Constitution If that qualifying oath cannot be truthfully taken by an elected member, if going through the form would be a travesty, if not perjury, then, of course, the mere election of such a member does not render him immune from this constitutional qualification any more than election would entitle him to dispense with the qualifying oath altogether because he asserted that he could not truthfully or conscientiously take it or that his constituents did not approve the Constitution!

The Speaker of the Assembly charged the five Socialist Assemblymen specifically as follows:

(1) That they had been elected on a platform absolutely inimical to the best interests of the State of New York and of the United States,

(2) That the Socialist Party was not truly a political party composed solely of American citizens, but a membership organization admitting within its ranks aliens, enemy aliens and minors,

(3) That the constitution of the Socialist Party bound a member thereof "when elected to a public office to abide and carry out such instructions as he may have received from the dues-paying party organization or as prescribed by the state or national constitution of the party",

(4) That the five Socialists were bound in spite of their oath of office "to sit subject to instructions received from an executive committee which may be made up in whole or in part of aliens or alien enemies owing allegiance to governments or organizations whose interests may be diametrically opposed to the best interests of the United States and of the people of New York";

(5) That the Socialist Party of America had adopted disloyal and treasonable resolutions at the outset of the war in April, 1917, among other things characterizing national patriotism as a "false doctrine" and upholding the alleged "ideal of international working class solidarity", and

(6) That the Socialist Party of America was acting in sympathy with Bolshevism and Russia.

These were the distinct charges specified by Speaker Sweet, and none of the facts stated by him were then denied by the accused Socialists

Thereupon, resolutions were adopted by the Assembly denying seats to these five Socialists pending the due determination of their qualification and eligibility, and referring the investigation to the Committee on the Judiciary of the Assembly. The preambles to the resolution of January 7th distinctly set forth the facts which the Assembly found constituted to its satisfaction *prima facie* evidence of disloyalty and upon which it was acting, and none of the facts so recited was then denied. These preambles stated as follows

(1) That each of the five Socialists elected as Assemblymen was a member of the Socialist Party of America,

(2) That as recently as August, 1919, the Socialist Party of America declared "its adherence and

solidarity with the revolutionary forces of Soviet Russia and did pledge itself and its members to the furtherance of the Internationale Socialist Revolution",

(3) That the said Internationale to which the Socialist Party of America had declared its adherence and solidarity "is pledged to the forcible and violent overthrow of all organized governments now existing",

(4) That under the constitution of the Socialist Party of the State of New York instructions as to official acts of Socialist Assemblymen "may be given by an executive committee made up in whole or in part of aliens or alien enemies owing allegiance to governments or organizations inimical to the interests of the United States and the people of the State of New York", and

(5) That the five Socialists by being elected upon the platform of the Socialist Party of America "have thereby subscribed to its principles and its aims and purposes against the organized government of the United States and the State of New York, and have been actively associated and connected with an organization convicted of a violation of the Espionage Act of the United States "

Let me repeat again, and it cannot be repeated too often, none of these facts was denied or challenged by the accused Socialists so far as the record discloses, and their existence was being certified by the Attorney-General of the State and probably also by the Lusk Committee

Notwithstanding these charges, which clearly showed on their face, if true and duly established by evidence, that the accused Assemblymen belonged to and were affiliated with a disloyal, seditious and revolutionary organization, we are now

told by their champions that there were no specific charges against them as to their personal qualifications and that they were arbitrarily and tyrannically denied their seats and the right to legislate for the people of this State

Then it is asserted that some fundamental principle of representative government precludes the suspension of these Socialists because otherwise constituencies might be disfranchised and go unrepresented. There is no such principle and never has been that would prevent a legislative body from acting as it believed to be its duty, and thereupon suspending or expelling a member. No constituency is entitled to send to our Legislature a disloyal representative. It ought to suffice to say that as long as the Constitutions of Nation and State stand as they are, and for generations have stood, and require a qualifying oath solemnly binding each legislator to support the Constitution, no disloyal electorate can foist a revolutionary member upon Assembly or Senate. Equally ought it to suffice to say that when each of our legislative houses was made the sole and exclusive judge of the qualifications of its members, it was perfectly well understood that the power might be abused, and yet it was deliberately and unqualifiedly vested in them because necessary for their independence and self-protection.

We are further admonished by the defenders of these Socialists that last year in this city the Socialists cast for their candidate for President of the Board of Aldermen as many as 126,365 votes, or  $13\frac{1}{2}$  per cent of the total vote cast, and it is in-

timated that it is a very grave, if not dangerous, step to disfranchise such a large body of voters by refusing to seat their elected representatives. Let us pause and reflect upon what this argument really means and where it will lead us. Does it not mean that the Constitutions of both State and Nation should be disregarded in order to conciliate disloyal and revolutionary voters and seat their representatives because these voters are numerous? But does it not emphasize and make clear the truth of the contention of the responsible leaders of the Assembly at Albany that what was negligible in the past is no longer so? Twenty years ago in 1901 the Socialist vote for Mayor of the City of New York was 16,047, or about 3 per cent. of the total; in 1917 during the war, when Hillquit ran for Mayor on a thinly disguised anti-war and disloyal platform, the Socialists cast 144,135 votes, or 28 per cent. of the whole! It seems to me that it should be plainly obvious to all unprejudiced observers that the great increase in the Socialist vote is not only a warning, but a summons to defend our institutions before it is too late. It seems to me that the American character has become woefully degraded if the mere magnitude of the menace to our institutions should make us quail before the danger and induce us to compromise with revolution for the sake of present safety and quiet.

Again, it is said by the champions of the five Socialists in the printed argument filed with the Judiciary Committee of the Assembly that —

No better weapon can be given to them than the crown of martyrdom. The very evils that are

feared and that are sought to be counteracted by the resolution pursuant to which the respondents have been suspended will be precipitated by the action taken.

Now, if this amazing statement means anything, it means that revolutionary movements must be suffered and tolerated and the Constitution disregarded for fear of what? Force! The statement implies a threat of force! We must suffer and tolerate and conciliate and appease these Socialists. We must permit them to write the laws which we are to obey. We must fold our arms and hold our tongues and allow them to undermine our institutions unchecked, unscourged, uninterrupted, because, forsooth, we may irritate them and thereby precipitate the destruction and violence and bloodshed for which they have been and are now preparing and plotting! I agree with Ole Hanson, the brave Mayor of Seattle, who, in the preface of his book, published a few days ago, proclaims.

I am tired of reading rhetorical, finely spun, hypocritical, far-fetched excuses for bolshevism, communism, syndicalism, I. W. W. 'ism!

And I agree also with what he says of Bolsheviks, which is but another name for Socialists:

. . . Strikingly ignorant, malignantly cruel, with no concept of history, with but an elementary knowledge of social production, with little productive capacity, with no constructive ability, this movement in our country would be ludicrous were it not for the sentimental weak-minded followers who, steeped in idealism and fanaticism, really believe in a Bolshevik Utopia, where free milk will run in the watermains and life may be supported without toil,

where knowledge may be gained without effort, and where the established truths of the centuries will be overthrown by soviet resolutions . A government which will not defend itself cannot stand. We have had enough of weakness, conciliation, and pandering We must run the United States of America primarily for the United States of America

On behalf of the Committee on Political Reform I earnestly and fervently submit that it is sound Americanism in our state legislatures (as it was in Congress when it expelled Victor Berger) to stand fast by the rule that no disloyal member shall be allowed to sit even for an hour as one of our legislators Unhappy will be the day for this country and terrible and miserable will be the future of ourselves, our children and all loyal Americans, if we now temporize with this menace and let it grow until we can no longer control it — until it overflows the dam and inundates us Let us dauntlessly raise again a true standard of unqualified loyalty to our Constitution, and insist that it shall be observed according to its vivifying spirit of American liberty regulated by law

In conclusion, may I not be permitted to anticipate a counsel of timidity and vacillation, to the effect that this Club, which started the movement against dangerous Socialists in the State of New York, should do nothing this evening, but wait until we see the outcome of the pending investigation. Those who now counsel delay rushed to criticize the Assembly and refused to wait until the evidence was adduced. They refused to give the Assembly the benefit of any presumption They

refused to read or discuss the specific charges of disloyalty and disqualification. They insisted on assailing the Assembly and its Speaker in ignorance or defiance of the facts. And some of them conceived and still imagine that public clamor may coerce the Assembly to decide the question of the qualifications of these five Socialists other than upon the evidence and upon the merits. Constituted as humanity is, men and particularly large bodies frequently bend before the wind of what is called public opinion, but which is often nothing but manufactured clamor. We hear constantly on all sides of the great virtue and irresistible force of American public opinion, but if history teaches this generation any lesson, it is that public opinion may be both ignorant and wrong, and that the stronger public opinion or clamor or the influence of the yellow press may be in a state, the more necessary is it that there shall be competent and courageous men who are not to be swayed by temporary gusts of popular sentimentality, prejudice and excitement, who will not compromise in essentials, and who stand always ready to uphold and defend constitutional morality at any cost until the sober second thought of the people can reassert itself and protect the crowd against itself.

The Union League Club of New York can render a really great public service by promptly extending its moral support to the Assembly, by deprecating unwarranted criticism and all attempts to cloud and prejudice the issue, and by urging it to stand steadfast and determine the question of the qualifications of the accused Socialists solely upon its merits, ac-



ording as the members conceive that their consciences dictate and the best and permanent interests of the people of the State of New York demand. Let us hope and pray that they will decide the issue uncoerced by clamor or threat: in the noble words of Lincoln, "as God gives them to see the right."

I accordingly move the adoption of the following resolution.

RESOLVED that the report of the Committee on Political Reform, dated February 12, 1920, relating to the recent deportation by the National Government of dangerous aliens and to the suspension by the New York Assembly of the five Socialists elected as members pending inquiry as to their qualifications, be and it is hereby approved by this Club, and that copies of said report and of this resolution as well as of the remarks at this meeting of the Chairman of the Committee on Political Reform be sent to the Attorney-General of the United States, the Secretary of Labor and the members of the New York Assembly, and otherwise distributed as the officers of the Club or of said committee may direct.<sup>1</sup>

<sup>1</sup> After a general debate, the resolution quoted above was adopted by the Club

## THE FEDERAL GOVERNMENT AND EDUCATION<sup>1</sup>

**I**N compliance with the request of many interested in the subject of education, I have studied the provisions of the so-called Smith-Towner Bill (S. 1017 and H. R. 7) entitled:

A Bill to create a Department of Education, to authorize appropriations for the conduct of said Department, to authorize the appropriation of money to encourage the States in the promotion and support of education, and for other purposes.

I have also studied the report of the joint hearings before the Committees on Education and Labor of the Sixty-sixth Congress as well as a number of publications discussing the above-mentioned bill and the governmental policy that it seeks to introduce. The aspects of the subject which I have considered may be briefly summarized as follows:

1. Under the Constitution of the United States, no power has been delegated to Congress to regulate or control education in the several States. That subject was left within the exclusive domain and governmental duty and responsibility of the several States, and Congress cannot constitutionally seek directly or indirectly to regulate or control education in the States without violating the reserved rights of the States and the fundamental principle of local self-government.

<sup>1</sup> Remarks upon the Smith-Towner Bill, prepared and published in December, 1920

2. The provisions of the Smith-Towner Bill would, in my judgment, inevitably involve an attempt at interference in the local affairs of the States, and the policy of so-called federalization of education once established would lead to an agitation and demand for a constitutional amendment in order to vest in Congress adequate and effective power of centralized supervision and control.

3. Any such increase of federal power and diminution of state authority, responsibility and duty would be prejudicial to the best interests of the Nation and of the States.

4. The creation of a new executive department to be known as the Department of Education, with a Secretary of Education as the head thereof and as such a member of the President's Cabinet, would bring the subject of education into politics, with the danger of constantly varying educational policies and constantly pursued efforts to control the patronage of the department in the interest of the political party then in power

5. The tendency of federal interference and direct or indirect control would be towards the centralization and standardization of education, and such centralization and standardization would in all probability prove to be prejudicial, not only to the public school system, but to the independent and satisfactory operation of existing private schools, including those maintained by various religious denominations for the purpose especially of securing to the younger children of the country the benefit of adequate religious training as well as secular education.

It is generally conceded that under the Constitution of the United States the subject and control of education are at present indisputably within the exclusive domain of the States, and, indeed, many of the advocates of federal subsidies to the States insistently repudiate any intention of interfering with the control of the States. These advocates may sincerely believe, as I have no doubt they do, that the movement for federal subsidies and interference can be permanently limited to financial and advisory aid, and can always be checked so as to prevent any infringement upon the constitutional rights of the States. But to accept this view would be to disregard all the lessons of practical experience .

If the States begin by accepting moderate grants of federal funds as, for example, one enabling them to increase the salaries of their public school teachers, and if, in order to secure federal funds, they conform to federal standards, they will in time come to rely upon the Federal Government for larger and larger appropriations. This reliance will inevitably undermine their independence and sense of responsibility and destroy the incentive of local pride and interest in the subject of education, as well as engender a feeling that the burdens of local taxation and responsibility in connection with education could and should be shifted to the Federal Government at Washington.

Federal aid without any direct or practical control and federal advice without any power of enforcement would undoubtedly prove unsatisfactory, and would inevitably create an agitation to render

federalization actually effective and federal advice or direction practically enforceable. If the country should be now persuaded to approve the appropriation by Congress of large sums of money merely "to encourage the States in the promotion and support of education," it would not be many years before it would be urged that federal aid without control had been found to be unsatisfactory because of the lack of adequate power of enforcement, and, therefore, that full and effective authority should be secured by constitutional amendment.

As to the danger of standardization, what seems to me to be a fair and accurate forecast is contained in a pamphlet issued by the American Council on Education at Washington in connection with the proposed Smith-Towner Bill, as follows:

The power to establish standards would unquestionably be the most influential prerogative of a Department of Education. Under the Smith-Towner Bill the Department is implicitly given this power. Through its ability to withhold appropriations unless State plans meet with its approval, the Department can establish minimum standards in some of the principal fields of educational effort. It is this implied power to coerce through shutting off supplies that constitutes in the minds of critics of the bill one of its principal dangers. Standards formulated in the serene seclusion of Washington may be imposed without debate or appeal upon institutions in all parts of the United States. Nothing is more likely to foster bureaucratic tendencies.

And to this should be added the statement of the retiring Secretary of the Interior, Franklin K. Lane, in his final report to the President, dated February

28th, 1920, that "federal control of schools would be a curse, because the inevitable effect of federal control is to standardize," etc.

Interference by Congress in the matter of education would, as it seems to me, gravely imperil the future integrity, independence and autonomy of the States. Nothing is more essential to the perpetuity of our present system of government than the federal principle of Nation and State each supreme and independent within its allotted sphere, and the preservation to the States of their right to local self-government, and the actual practice of that right. Our Federal Constitution contemplates and assumes the continuance of the States as autonomous, independent, self-governing communities, and this is an inseparable incident to the republican form of dual government intended to be established by the Founders of the Republic. Such a vital principle ought not to be in any way sacrificed by the States because of a temporary crisis, or because of a desire for subsidies of federal funds to meet the increased cost of education. The States should be jealous of their right to control a matter affecting them so vitally, and should not experiment with federal control, which under federalization would be centered in Washington and might readily develop into the tyranny and irresponsibility of bureaucratic government.

In the recent case in which the Supreme Court of the United States held unconstitutional and void the so-called Child-Labor Law of Congress, the opinion of the court by Mr. Justice Day among other things stated (247 U. S. Reports 251, 275):

The maintenance of the authority of the States over matters purely local is as essential to the preservation of our institutions as is the conservation of the supremacy of the federal power in all matters entrusted to the Nation by the Federal Constitution.

In interpreting the Constitution it must never be forgotten that the Nation is made up of States to which are entrusted the powers of local government. And to them and to the people the powers not expressly delegated to the National Government are reserved. *Lane County v. Oregon*, 7 Wall. 71, 76 The power of the States to regulate their purely internal affairs by such laws as seem wise to the local authority is inherent and has never been surrendered to the general government.

And more than fifty years ago Mr Chief Justice Chase, in the famous case of *Texas v White* (7 Wallace 700, 725), used the following language:

The perpetuity and indissolubility of the Union, by no means implies the loss of distinct and individual existence, or of the right of self-government by the States. . . . Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States

I have cited these two decisions of the Supreme Court in order to emphasize the fundamental and essential feature of the federal and dual aspect of our national political system. In doing so, I have

not, of course, overlooked the recent decision of the Supreme Court in the Prohibition Cases (253 U S Reports 350), upholding the constitutionality of the Eighteenth Amendment. Whilst it is true that the Eighteenth Amendment, as interpreted by Congress and enforced by the Supreme Court, infringes upon the theretofore reserved powers of the States as to their local affairs, the court did not necessarily hold—it decided the cases without opinion—that the amendment was not violative of the spirit of the Constitution and the theretofore reserved powers of the States. The undisclosed theory upon which the court upheld the amendment may have been, and probably was, that the question of the exercise in any particular case of the power of amendment under Article V of the Constitution was of a political nature and as such was not the subject of judicial cognizance, just as the court had previously held that the question of whether or not a state constitution provided a republican form of government, as guaranteed by another article of the Federal Constitution, was not a justiciable but a political question and was to be determined conclusively by the political branches of the Government. But it does not follow from this conclusion that an amendment substantially interfering with the right of local self-government is not, as such, in conflict with the fundamental spirit of the Constitution itself and with the theory and form of federal government that it originally established.

This aspect of the subject is mentioned because the existence of practically unlimited power of



amendment should warn all patriotic Americans, who believe in a federal system constituted of "an indestructible Union composed of indestructible States," that the Supreme Court cannot be looked to for redress, and that the defense and preservation of the right to local self-government now lie wholly in the hands of the people, who, if they are not active and vigilant, may improvidently surrender or lose by default the most valuable of their political rights. In criticizing the Eighteenth Amendment and its inevitable tendency to beget other like amendments, Senator Thomas, of Colorado, in a learned and eloquent address, delivered before the New York State Bar Association at its annual meeting last February, well said that "history warns us that the first step toward fundamental change leads inexorably to another, and yet another, until the great transformation is finally realized, or violently prevented."

If the American people now permit the appropriation by Congress of one hundred million dollars of federal funds annually in aid of education in the States, it will soon be realized that this sum is inadequate to produce any substantial results, and the next step will be to increase the appropriation. In a few years, it will be appreciated that federal interference, which they have been permitting and seeking indirectly to bring about, can after all only be accomplished effectively by a constitutional amendment. Accustomed by that time to the idea of federal regulation, anxious as some of the poorer States will be to be relieved of the burden and responsibility of education, misled by the clamor of

ardent or fanatical propagandists, and blind or indifferent to the great principle and duty of preserving to the States their right to local self-government, the proposed amendment might be brought about as easily and as speedily as the Eighteenth Amendment.

The most serious aspect of the situation is that the doctrine of the rule of the majority no longer necessarily controls upon the question of the amendment of the Federal Constitution. States representing a minority of the citizenship of the Nation can amend the Constitution in any respect they see fit, and no matter how oppressive or how prejudicial may be any such amendment in its practical operation or enforcement, a very small minority can prevent its repeal, although the best interests of the country at large may then demand such repeal. We have created so many new States that now, under the figures disclosed by the recent census, a group of thirty-six States could be combined which would represent only forty-five per cent. of the population, whilst thirteen States would together have a total population of only five per cent of the whole. Stated in other words, the Constitution of the United States can now be amended by the votes of state legislatures representing a minority of the people of the United States, and state legislatures representing only five per cent of the citizenship can prevent any repeal or change.

It is of paramount importance that the American people should clearly realize the fact that under the decision of the Supreme Court upholding the Eight-

eenth Amendment, there is, perhaps, no state function that cannot be taken over by the Federal Government under the power to amend the Federal Constitution, and that the only protection lies in patriotic and vigilant public opinion. If these questions involving the perpetuity of local self-government and the right of each State to regulate education within its own borders be submitted to the people with adequate explanation and full discussion of the merits, the verdict will probably be a wise and just one. All parties and all religions are alike interested and concerned in preserving our institutions. The American spirit ought to lead to a sound, provident and just conclusion. True Americans, who understand the real issue, will never barter away the heritage of local self-government simply to secure a few millions of federal funds in aid of education. Nor will they abdicate their duties and responsibilities to their children and the children of their neighbors. They will not vote, as I confidently believe, to transfer the education of their children, a matter of as vital concern to them as their religion, to a bureaucracy functioning in Washington and controlled, it may possibly be, by obscure and irresponsible politicians. I have no apprehension as to the result, if those who believe in our present form of republican government will unite and defend their right to local self-government, and not allow this great and vital issue to go by default.

In studying the recent publications upon the subject of education, I have been profoundly impressed by the general and emphatic recognition on the part

of Catholic, Protestant and Jewish organizations that systematic religious training should be regarded as indispensable in the education of our children, and that many of those who are now attending the public schools are not receiving proper religious instruction. The most complete vindication of the Catholic doctrine as to the necessity of religious training for school children has recently come from the thirty odd Protestant denominations which were united in what was called the "Inter-church World Movement of North America," and in support of which an exhaustive survey was published. This publication apparently favored the enactment of the Smith-Towner Bill, but among other pertinent observations on education, it declared that "the survey shows how utterly inadequate are the religious agencies and forces at work," that "America's greatest peril (lies in) the spiritual neglect of childhood," that there are "twenty-seven million Protestant children and youth, under twenty-five years of age, who are not enrolled in any Sunday School or other institution for religious training," and who are "without any definite or systematic training in religion," that this defect "constitutes the greatest peril in our national life," that "this is the seed plot of immorality, crime, social unrest and anarchy," that "one-half hour a week (of religious instruction) is utterly inadequate," that "unless this fundamental need of religious education be met, the solution of the present situation is hopeless," that "a religious education should be the heritage of every child," that "spiritual illiteracy is the greatest peril of organized so-

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ciety," and "is the forerunner of moral bankruptcy and national decay," that "the church must find a way to reach the children and to account for them systematically from infancy to maturity," that "the national public school system must be supplemented by a unified program of religious education which will guarantee the spiritual homogeneity of our democracy," and that "unless such a program of religious education can be created, there is great danger that a system of public schools will become nationalistic and materialistic in theory and practice, and the direction of social development will be determined by the secular state rather than by the spiritual forces represented by the church "

Similarly, the Jews are fully realizing that many of the existing schools have failed in the essential need of religious education. At the commencement exercises of the Jewish Theological Seminary of America and Teachers' Institute, held last Spring, the distinguished chairman of the board of directors is reported to have stated that of the three hundred thousand Jewish children in the City of New York "not fifteen per cent. of them received the proper religious education," and to have characterized as shameful the manner in which religion was being neglected by the Jews in the training of their children.

In conclusion, I venture to point out that the matter of the Smith-Towner Bill now pending before Congress is urgent, and that its consideration cannot be delayed. Many active and zealous propagandists are agitating for the nationalization of education under the provisions of this bill, and

hundreds of organizations throughout the country are said to have endorsed it and to have urged its passage. Such a measure, if once passed, will, as it seems to me, become the opening wedge, it will probably be found to be inadequate, there will be constant reaching out for more and more power in the matter of education, and there will then be started a movement for a constitutional amendment so as to render federal interference and control adequate and enable the proposed new Department of Education effectively to regulate and control education throughout the whole country. Beginning with the present proposed yearly appropriation of \$100,000,000, the tendency will, in my judgment, be irresistible to increase the appropriation, and then to insist that large federal appropriations should be coupled with adequate federal control. This in final analysis must spell the complete nationalization of education.

I am profoundly convinced that the tendency of the Smith-Towner Bill, if enacted, would be distinctly prejudicial to the permanent and best interests of the Nation, as well as of the States, that the subject of education should be left within the exclusive control, responsibility and duty of the several States under long established and sound principles of local self-government, and that unless the present federal centralizing tendencies be checked, our dual form of government cannot long endure.

In this most critical period of our history, every American is called upon, so far as lies in his power and to the utmost of his ability, to strive for a

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revival of reverence for American institutions as established by the Founders, and to inculcate, as the clear duty of national and state patriotism, a steadfast determination to resist the impairment or destruction of our federal system.

Let us always bear in mind the warning of John Fiske in his really great and inspiring essay, "The Critical Period of American History," where he wrote:

If the day should ever arrive (which God forbid!) when the people of the different parts of our country shall allow their local affairs to be administered by prefects sent from Washington, and when the self-government of the states shall have been so far lost as that of the departments of France, or even so far as that of the counties of England — on that day the progressive political career of the American people will have come to an end, and the hopes that have been built upon it for the future happiness and prosperity of mankind will be wrecked forever.

## SELECTION OF THE JUDICIARY <sup>1</sup>

IT is, of course, unnecessary to argue before any body of lawyers that the administration of justice is essentially the most important and the highest of all the permanent functions of modern government, that it affects and concerns the people more vitally than any other exercise of governmental power, and that it should be confided only to trained experts learned in the law and in duty bound to execute justice impartially in accordance with fixed, definite and known principles. Since justice is the foundation of civilized society and finds its approximation in human affairs in the judgments of the judges, there can be no subject of more importance to the real well-being of the body politic than the selection of judges of learning and probity. And it is proper to proclaim that the very basic quality of sound citizenship must ever be a respect for the judiciary.

Among competent observers, the fact is generally, if not universally, admitted that the service of trained experts in all branches of American Governments, National and State, has now become indispensable because of the growth and complexity of the problems presented for administration and solution. This expert service is the greatest of our existing needs; but at the present time it is to be

<sup>1</sup> Address at Conference of Bar Association Delegates held at the annual meeting of American Bar Association at Cincinnati, Ohio, August 30th, 1921.



found only in the administration of justice. It may be said without exaggeration that, as a general proposition, from the beginning of our national history and the founding of our political institutions, the Bar has been practically, with very few exceptions, the only body from which experts trained in the principles and science of government have been recruited whether for the administration of justice, or for service in the legislative and the executive branches of government. Indeed, the prestige and influence, as well as the principal glory of the American Bar, have ever sprung from its spirit of disinterested public service and its unselfish patriotic consecration of high abilities and character to public work, whenever called upon to serve. Happy will it be for our country if that spirit shall always continue to inspire and animate the profession.

The absence of insistence by all classes in our country upon the necessity for experts in the public service is not fortuitous, and it may, therefore, be interesting to consider its cause. The American system of government and administration originated in small communities where the functions of government were simple and where there was no obvious need of trained experts. Every honest citizen was regarded as being capable of filling any public office, and was generally more or less competent to do so. Despite our great increase of population and our industrial growth, the multiplication of administrative and judicial officers and the complexity of modern problems, the general attitude toward government and public service and the administration

of justice has not materially changed from what it was in the beginning. Even to-day, in practice, the people generally seem to think that any honest citizen may fill any office to which he is able to get himself appointed or elected.

In view of the recognized efficiency and high standing of our private commercial enterprises, this general attitude toward public service is one of the great anomalies of the age. No successful business organization would think of putting into an important administrative post any one other than a trained expert of proved capacity and fitness for the work to be done, yet it is seldom that an official is elected or appointed to public office because of his special training and fitness for the particular kind of governmental service which he is to be called upon to render, and not infrequently judges are appointed or elected without any regard whatever for their learning or training.

History teaches us that it has been a delusion in all ages and in all countries among primitive men and people of simple and untrained minds that judges could and should exercise with a free hand the *virtus boni arbitrium*, and disregard any rule or precedent which might seem to interfere with the justice of the particular case, although in no civilized community does any such practice prevail, or, in fact, could long prevail. We find many uninformed and impatient critics of the administration of justice, to whom the law seems to be but a mass of mere technicalities and repellent mysteries, because they do not comprehend the controlling reason of the principles and rules that must be

applied, of which a knowledge is not to be obtained without years of assiduous study. If they would only take the labor to seek the truth, they would discover that at the present day, in almost all civilized countries, and certainly so in the United States, the "law has learnt, in a manner never before attained, to speak the language of sound reason and good sense," and that, as Sir Frederick Pollock well says in his First Book of Jurisprudence, "Legal justice aims at realizing moral justice within its range, and its strength largely consists in the general feeling that this is so. Were the legal formulation of right permanently estranged from the moral judgment of good citizens, the State would be divided against itself." But justice administered without regard to law would lead inevitably to chaos, for there would then be neither certainty nor uniformity to rely on, and men and women would soon find that all their most cherished liberties and personal and property rights would be at the mercy of discretion, caprice and errors of individual judges

Although lawyers appreciate the necessity of securing the services of judges really learned in the law, the great mass of men and women who now constitute our voting citizenry do not realize their own vital interest in this question and the danger to themselves of permitting untrained and ignorant persons to be elected or appointed judges. Public opinion may be aroused to resent and protest against flagrant attempts to control the judiciary or to interfere with the impartiality and independence of the judges; but in ordinary cases public

opinion can seldom be counted upon to exercise any influence or restraint where the question of competency alone is involved.

It is an interesting fact that in neither the Constitution of the United States nor in many of our state constitutions is there any provision requiring judges to be in any way qualified by learning and experience in the law, or even that they shall be lawyers. A number of state constitutions require their judges to "be learned in the law" and one, Maryland, requires them to be selected from among those "most distinguished for integrity, wisdom and sound knowledge," whilst about one-third simply prescribe the qualification of being admitted to practice. So far as the United States Constitution provides, there is no requirement that a justice of the Supreme Court of the United States or any judge of the inferior federal courts shall be a lawyer, or even a citizen of the United States. This omission is the more striking because of the express provisions in that Constitution which require that the President of the United States shall be a natural-born citizen and that every representative or senator shall be a citizen of the United States and an inhabitant of the State in or for which he shall be chosen.

Some years ago it was seriously suggested by a professor in one of our colleges that what he called lay-members should be appointed as justices of the United States Supreme Court, his notion being that this would tend to humanize the court and bring to it a greater familiarity with practical affairs. As the number of the justices of that great court is

subject to control by Congress, it must be manifest that its essential character could be readily subverted at any time if the legislative and executive branches saw fit to combine to appoint untrained men or women as justices of the court.

The omission in the Federal Constitution and in some state constitutions of any technical qualification for even the highest judicial office is both curious and surprising in view of the fact that for many centuries it had been recognized as a fundamental principle of the English system, from which we derive our constitutional institutions, that appointment to judicial office should only be from among those who were learned in the law. Magna Carta of 1215 had expressly so provided, and had pledged the King to appoint as judges "only such as know the law of the realm and mean to observe it well."

The framers of the Great Charter seven centuries ago seem to have grasped the fundamental truth that the law is a science, that it should be administered by men expert in that science and bound to obey its fixed rules and follow its precedents, that uniformity and certainty were essential to the satisfactory administration of justice and the protection of the rights of the individual, and that the highest political liberty was the right to justice according to law and not according to the will of the judge, or his individual discretion, or his personal ideas of right and wrong. They believed that Englishmen should be entitled as of absolute right to a day in court and to a trial before judges learned in the law, who would hear before they

condemned, who would proceed upon notice and inquiry, and who would render judgment only according to the law of the land after a fair trial. They sought to secure permanent courts and learned, independent and impartial judges, and they instinctively felt, if they did not clearly perceive, that the law was wiser than those who might be called upon to administer it, and that, as Aristotle had declared fifteen hundred years before, "to seek to be wiser than the law is the very thing which is by good laws forbidden."

In his latest work, recently published, entitled "Modern Democracies," Lord Bryce again discusses the administration of justice in this country, and in this respect seems to have reached the conclusion that we are inferior to the five other modern democracies whose institutions he reviews, namely, France, Switzerland, Canada, Australia and New Zealand. His studies of American institutions and conditions have led him to declare that in some of the States our judges are lacking not only in learning and ability but even in honesty and impartiality, and that in nearly all of the States where the judges are elected by the people (that is to say, in more than forty States), they are markedly inferior to the leading counsel who practise before them. In speaking of what he characterizes as "faulty administration of justice," he writes the following:

In many of the American States where the Judicial Bench is filled by popular election, the Judges are far from competent, and in a few they are suspected of corruption. Everywhere the administra-

tion of criminal justice is so defective that a very high authority has called it a "disgrace to American civilization." In France the inferior judges are not altogether trusted. In the four other countries the character of the Bench stands high.

It is surely the duty of the American Bar to ponder this indictment of our elective judiciary and of the administration of our criminal justice. If well-founded, it calls for immediate and concerted action by all bar associations. It seems to me, however, that Lord Bryce's statements are altogether too sweeping and are not sustained by the facts. They must be based upon information of a very few unfortunate but exceptional instances, which do not warrant any such broad generalizations as he has declared to be characteristic of the judiciary in many of our States.

Neither my studies nor my professional experience qualify me to speak from personal knowledge of all the States that have an elective judiciary. But after an experience of over forty years at its Bar, I can speak advisedly of the State of New York, which has had an elective judiciary for seventy-four years, since 1847, and as to a number of other States having elective judiciaries, I have reliable information furnished by experienced and trustworthy local practitioners with whom I have been for many years corresponding upon this very point. I venture to assert that Lord Bryce's indictment is not true as to the judges of most of the States, and emphatically not true of my own State of New York, where the judges, particularly those of the Court of Appeals and of the Supreme Court,

are competent, many of them equal in learning and some superior to the leading counsel who practise before them, and for nearly half a century none, so far as I know, has been suspected of corruption. As to the other States where judges are elected by the people, I have no doubt that, if we could secure the testimony of the members of the American Bar Association attending this annual meeting, we would find many of them challenging and refuting as to their respective States the views stated by Lord Bryce

Moreover, whilst the members of our profession differ as to the relative merits of the appointive and elective systems, and I have not time in this review to discuss that very important and interesting theme, no one can assert that the appointive system has proved itself to be invariably superior to the elective system. It is quite true that an executive, guided by the advice of competent experts, ought to be able to examine into and pass upon the qualifications of an applicant or candidate recommended for high judicial office far better than any nominating convention or the people acting through direct primaries. Nevertheless, recent striking examples in both Federal and State Governments have shown that political and personal considerations have at times controlled judicial appointments by executives and that the selections have not always been from among those qualified by learning, or character, or reputation in professional circles

I do not, however, mean to claim that our judicial systems are faultless. There have been, and from time to time there are, unsatisfactory and



objectionable judges in the United States as in other countries and under other forms of government. There are undoubtedly among us the defects and legacies of pioneer life and of a comparatively newly settled country of vast area, and we may suffer from the influx of millions of immigrants destitute of the instincts and traditions of Anglo-Saxon liberty regulated by law. It would be absurd to expect uniform excellence or perfection in a body of hundreds of elective and appointive judges. But, taken all in all, the American judiciary has upheld the traditions and standards which ought to be maintained, and has proved itself to be the most competent and satisfactory branch of the Federal and State Governments. It has generally been found to be equal and is now generally equal to the high and noble function of administering justice between the State and the individual and between man and man. We may well recall with pride what the late Chief Justice White said of the American judiciary at the annual meeting of our Association in October, 1914.

My second thought, as I comprehensively contemplate the mode in which the judicial power has been exerted from the beginning by the courts both national and state, of all degrees of jurisdiction, is one of marvel at the devotion, the fidelity, the self-restraint and the love of country with which the power has been exerted, how rare the abuse, how infrequent the slightest semblance of ground for the belief that wilful wrong was committed, that is, that there was an intentional transgression of authority. What a tribute this is to our profession — for judges and lawyers are one. Indeed, as I look

at the subject, and contemplate the varied methods by which judges have been selected, the frequent shortness of their tenure, the almost usual inadequacy of their compensation, the natural exultation and pride in our profession which comes to me is tempered by a sense of reverent restraint, since the thought cannot be resisted that a result so remarkable has been brought about by the dispensation of a merciful Providence in vouchsafing the fulfillment of the promise, "As thy days, so shall thy strength be "

Certainly this fine testimonial came from one well qualified to express a fair and true judgment of the record and character of the American judiciary. Not only had he served as a Justice of the Supreme Court of the United States for twenty-seven years, but before that he had been an Associate Justice of the Supreme Court of Louisiana and later a Senator of the United States from that State.

There is nothing more essential to the success of any government than faith in the competent administration of justice and confidence in the impartiality and integrity of its judges. "There is," as Lord Bryce points out, "no better test of the excellence of a government than the efficiency of its judiciary system, for nothing more nearly touches the welfare and security of the average citizen than his sense that he can rely on the certain and prompt administration of justice . . . Law sets for all a moral standard which helps to maintain a like standard in the breast of each individual." It is, therefore, a very grave and serious thing to say anything that tends unwarrantably to shake or destroy the faith of the masses of our

citizens in the competency and probity of our judges; and it must long be a source of profound regret to the American Bar that Lord Bryce should have recorded the conclusions I have mentioned

The enduring character of the famous classic of de Tocqueville entitled "Democracy in America," first published in 1835, and of Lord Bryce's equally famous "The American Commonwealth," first published in 1888, must admonish us of the permanent and incalculable harm which may be done by the statements of Lord Bryce in "Modern Democracies," and their tendency to impair the faith and confidence of our people in the judicial branch of our governments. These statements are certain to be hereafter quoted in attacks upon our judiciary, and they may mislead many and shake the confidence and faith of not a few. They will tend to revive attacks upon the courts, and to justify such criticisms as were given publicity last week when the American Federation of Labor again intemperately criticized and challenged as judicial usurpation the exercise of the beneficent power and duty of the courts to refuse to enforce statutes passed in conflict with or in defiance of constitutional limitations.

I submit that it is not the fact that, "everywhere" in the United States, the administration of criminal justice by the courts is so defective that it constitutes a "disgrace to American civilization." Although a few sensational and extraordinary criminal cases have tended to bring reproach and disrepute upon us, they are not typical or characteristic in any fair or reasonable sense of the immense mass of criminal prosecutions. It is true that many

unwise technical and unnecessarily oppressive rules survive from the past; but these should be changed by the legislative branch and not by the courts, for the judges are administering justice according to law and not legislating or endowed with power to disobey or change settled rules. Delays often result from crowded calendars and the accumulation of cases as well as from the incompetency or dilatoriness of lawyers or prosecuting officers, and in certain States the enforcement of the law is sometimes weak and fitful and lacks that certainty and consistency which are so essential to the satisfactory and effective administration of justice. These faults, I believe, are exceptional. It would be hardly surprising that they should be found to exist in so populous and extensive a country and in so complex a federal system of forty-eight separate and independent States united under a National Government of limited powers and extending over an extensive territory. Perfection could hardly be expected, although ever to be striven for. At any rate, perfect or faultless administration of justice has never yet been found in any populous country under any form of government at any period.

It is, I submit, manifestly the duty of the American Bar to defend the good name of the judges, to refute such criticisms as I have quoted, and to insist, for such happily is the truth, that the judicial system of our country as a whole is not characteristically or fundamentally faulty, though undoubtedly there is need of change or reform in many details of procedure and of substantive law and that exceptional instances of disqualification

and unfitness for judicial office may here and there be found

The American Bar Association will never be called upon to render a greater public service than that of refuting all unwarranted general criticisms of our courts and such broad and erroneous generalizations as those to which I have referred. Criticisms from so high an authority as Lord Bryce will unfortunately be constantly repeated in the press and current periodicals, and may find ready acceptance among the ill-informed. The judges cannot defend themselves, and, if the profession at large is indifferent and silent, judgment will go by default in the forum of public opinion. Nothing, of course, could be a greater menace to our institutions and form of government than a general distrust of our courts. I, therefore, would say, in speaking to my text, that the primary duty and responsibility of the American Bar is at all times and in all places to defend the repute and prestige of the American judiciary and to justify the people's confidence in the probity, learning, impartiality and independence of our judges as well as in the ordinary justice of their decisions. A bench so defended, upheld and esteemed will attract lawyers of distinguished ability, elevated standards and high character, who will then be more willing to consecrate their lives to the administration of justice, the highest and noblest of all public service.

, Next in importance among the duties and responsibilities of the Bar is the education of the electorate to a realization of the truth that learning

in the law is indispensable and that no amount of popularity or good intentions can be a substitute. This education of the people is only practicable by means of constant and systematic propaganda. All classes should have deeply impressed upon their minds, first, that the courts afford the only effective and real protection and security for their personal liberty and their property, secondly, that neither can be maintained except when justice is administered competently, uniformly, consistently and impartially and always according to the law, and, thirdly, that a judge who has a mere smattering of law is dangerous to any community, for half-knowledge is frequently worse than ignorance.

A special and urgent duty of education and propaganda rests upon the Bar of the present generation. Women recently enfranchised now constitute fully one-half of the voters of the country, and they have little, if any, traditions, or what I shall term political instinct to guide them. It may, indeed, be said that women voters generally have no definite conceptions of the vital importance to all classes of expert service on the Bench and of adherence by our judges to the settled rules of law. It is easy for any man or woman to grasp the simple idea that a judge should be honest and impartial, that is instinctively appreciated. But few have any conception of the truth that justice according to law is what all must strive to secure and uphold as distinguished from what is expressed in such catching phrases as "Justice without law," or "Justice without regard to the technical rules or precedents of the past."

Another consideration which is peculiar to our own day and has greatly increased the duty and responsibility of the Bar in the selection of judges is the introduction of the primary system of direct nominations. Mr. Chief Justice Taft declared in an address several years ago that "Of all the evils which are supposed to be a cure for all evils the direct primary is the worst. . . As an example of what the primaries can do, I will say that they have already seriously impaired the standard of the judiciary."

There can be no doubt that the qualities required in a candidate for judicial office should be knowledge of the law, love of justice, probity, impartiality, independence and dignity, and that mere popularity, or, what is so often necessary to popularity, good-fellowship, is the last quality we look for in a judge. The self-seeker and self-advertiser — the man who will go around soliciting signatures to a nominating petition and then campaign for support in the primaries, — is seldom qualified by temperament or character for judicial office and seldom has the self-respect and dignity which we expect in a judge.

Before a judicial candidate can be intelligently and wisely selected, there must be a most thorough investigation and exchange of views as to his professional scholarship and repute, his practical training and experience, and his character. The question of his popularity should only be secondarily considered, if at all. A proper test is much more likely to be applied when there is responsible party government and appointment by an executive di-

rectly accountable to the people, or nomination by a majority of responsible representatives present in a public convention and discussing and debating the relative merits of candidates. Such investigation and discussion before the filing of designating certificates is seldom practicable under the direct primary system, particularly in populous communities.

In the State of New York, the direct primary system has been in operation for ten years as to justices of the State Supreme Court and eight years as to judges of the Court of Appeals, and its practical operation has been unsatisfactory. It has also compelled greater activity on the part of the Bar in order to secure the renomination of judges who had competently and satisfactorily served an elective term or the selection and nomination of lawyers of learning, experience and character

The Election Law of New York provided that, in order to become a candidate of any party for the office of judge of the Court of Appeals in the statewide primaries, designating petitions should be signed and acknowledged by at least three thousand enrolled voters of the particular party, and to become a candidate for the office of justice of the Supreme Court in any one of the nine judicial district primaries, designating petitions should be signed and acknowledged by at least fifteen hundred enrolled party voters.

It had long been the general policy of the Bar of the State of New York to urge and support the renomination and re-election on a non-partisan basis of all judges who had competently and satis-



factorily served an elected term and who had upheld the independence, dignity and prestige of the Bench. This policy had tended to promote independence and impartiality in our judges, and to make them feel that their renomination and reelection would depend only upon the character of the judicial service they rendered and that they would not have to look to political organizations or groups for renomination if they desired to continue in judicial office. Public opinion, stimulated in greatest measure by the Bar, had compelled the two great parties to unite in the renomination of satisfactory judges irrespective of party affiliation, although there had been some exceptions.

Under the new law, however, political conventions could not renominate, and, if a non-partisan renomination of a particular judge by the two great parties were deemed desirable, this meant that at least six thousand signatures had to be obtained in the case of a judge of the Court of Appeals and three thousand in the case of a justice of the Supreme Court, simply in order to secure the printing of the candidate's name on the official primary ballots. The labor of securing these signatures to nominating petitions and the expense for printing, notaries' fees, etc., were considerable, and, of course, no self-respecting judge would undertake to solicit signatures for renomination, or be willing to place himself under obligations to any individual or group, even if he could personally afford the expense necessarily attending primary campaigns.

It was, therefore, realized that the new system imperatively imposed upon the Bar the duty to see

to it that the necessary funds were raised by voluntary contributions and that the requisite signatures were obtained in order that the name of a judge whose renomination was desired might at least appear upon the official primary ballots for the action of the party voters. This meant that year after year, as long as the primary system continued, the Bar had to organize months before the primaries were held, prepare and print nominating petitions, and obtain the necessary signatures. In fact, during the ten years that the direct primary system was in operation in the State of New York, the Judiciary Committee of the Association of the Bar of the City of New York felt called upon, each time the renomination of a satisfactory judge was desired, to organize the machinery for securing the signatures of thousands of duly enrolled voters and employ notaries to solicit signatures, and the supervision of this work required months of preparation and constant attention, notwithstanding the fact in some instances that there was no doubt of the general desire to re-elect particular judges upon a non-partisan basis and thereby ensure their continuance on the Bench and that the political leaders were agreed that this should be done.

Many thoughtful observers among the members of the New York Bar became convinced that the practical operation of the direct primary system had refuted the hopes and promises with which the advent of this alleged reform had been urged and heralded. It had been assumed, in the face of all practical experience to the contrary, that if the voters had the direct power, and other methods of

nominating candidates were abolished, they would perform their political duties more actively, that better qualified and more competent and independent candidates would then offer themselves or somehow would be brought to the attention of the electorate, and that nominations would then represent the choice of the majority in each party, and not that of minorities or of political bosses. How the majority were to ascertain the qualifications of possible candidates in large and populous districts, or coöperate to secure the nomination of the best qualified, was left quite in the air. It seemed to be conceived that the people would instinctively seek and by some process of political inspiration would intuitively discern and select for public office the best qualified persons in each community.

In populous constituencies, such as the State or City of New York, with hundreds of thousands of enrolled voters, it was truly unreasonable to have expected that the direct primary system would be more likely to secure competent and trustworthy candidates than the old method of nominating at public conventions composed of responsible representatives of the voters from each election district. Indeed, in the State of New York the result of the direct primary system has not only been to increase the power of the so-called political machines and the bosses, but to render them irresponsible, and to impair party discipline. If an unfit and improper nomination is made, the leaders can disclaim responsibility by pleading that the secretly directed primary has declared the will of the majority.

In the face of a decade of practical experience and a fair and sufficient trial of the direct primary system, the New York Legislature has this year concluded that the best and permanent interests of the State would be promoted by restoring the nominating convention for state officers including judges of the Court of Appeals and justices of the Supreme Court, and accordingly it has so enacted.

It was undoubtedly true that there had been grave abuses in the convention system, that conventions at times had been improperly conducted, and that the scandals in connection with contested seats had become intolerable. But there was no form of abuse that could not have been remedied by appropriate legislation. Moreover, the control of nominating conventions was at all times in the hands of the majority of the voters if they would only have taken the trouble to enroll and vote at the primary elections for competent and honest delegates. The rights of delegates could readily have been safeguarded by law, and the abuses arising from contested seats could have been prevented by giving the certified delegates an absolute right to their seats subject to review only by the courts, as has been done in the New York legislation enacted this year.

The idea that the direct primary would in and of itself tend to stimulate greater participation in nominations or to eliminate the professional politician or the boss has been shown to be erroneous, I am informed, in almost every State where the scheme has been tried. In fact, quite the contrary seems to have been the ultimate result in many

instances, and it may truly be said that the present condition of nominating machinery under direct primaries is in practice and result much more objectionable than under the old system. In final analysis, there will be found to be no protection or remedy against fraud or corruption in nominating candidates for public office equal to the participation in nominations of the majority of voters as an imperative duty of citizenship. Our political rights cannot be preserved except by our own active and constant vigilance. In this respect we shall get just what we deserve.

The electoral campaign conducted by the Chicago Bar Association in connection with the elections held in June of this year shows quite conclusively the useful public service that can be rendered and the controlling influence that can be exercised by Bar Associations. The success of the movement initiated by the Bar of Chicago was complete, astonishing and inspiring, and the example should be emulated. The twenty candidates for judicial office who were endorsed by the Bar of Chicago were elected and most of them by majorities of over 100,000 votes. The Bar of that city was assessed for the necessary expenses of this campaign, and it voluntarily raised and expended a fund of more than \$100,000. The whole campaign was fought on the highest plane of patriotic public service, and the issue was the protection of the Bench from possible domination by and subserviency to any political organization.

The Association of the Bar of the City of New York has long had a standing committee known as

the Committee on the Judiciary, and the jurisdiction and duties of this committee are prescribed in the by-laws as follows.

A committee on the judiciary, which shall consist of nine members. It shall be charged with the duty of observing the practical working of the courts of record, both civil and criminal, and of making such recommendations to the Association with respect thereto as it may deem advisable.

It shall consider the fitness of candidates nominated or proposed for election or for appointment to judicial office or to any office connected with the administration of justice in the courts of record, and shall confer on that subject with other organizations, and with nominating conventions or committees, and, in the case of candidates for appointment to any such office, with the public officer in whom the power of appointment is vested, and shall recommend to the Association, at a special meeting or otherwise, such action in respect to candidates as it may deem advisable

This committee has systematically investigated the administration of justice in the City of New York, the character of the judicial service rendered by the judges, and especially the qualifications of candidates for judicial office, reporting from time to time to the Association. It has been constantly active, always ready to hear and investigate complaints, and before each election has carefully reviewed at length the training and qualifications of candidates and made appropriate recommendations, which have been almost always approved and endorsed by the Association.

The work of such a committee in large centres must be at times quite laborious and engrossing;

and it must always be a difficult and delicate task for lawyers to pass judgment upon fellow-members of the profession. The performance of such a duty unfortunately but inevitably invites bitter resentments, unwarranted attacks and unfounded challenges of motives, and it creates deep and lasting enmities. Constant resoluteness of purpose is called for in order to resist appeals of friendship and disregard the probability or the menace of attempted reprisals. The duty, however, must be performed and by the Bar, and it must not be shirked. There is no substitute. No other body of citizens is equally qualified. The sole consideration must be the best and permanent interest of the public, and the standard of performance must be a courageous, unshakeable and uncompromising determination to seek the truth and to be just, fair and impartial.

Every bar association should have its committee on the judiciary. It should charge that committee with the constant duty of investigating the practical administration of justice and the qualifications and services of the judges, and it should publish full reports as to the learning and character of candidates for judicial office, so that the public may be informed of their fitness or unfitness. No higher or more valuable service can be rendered to any community. The vigilant activity of a united Bar will be practically controlling in most instances. The profession can never exercise a greater influence for the public good than when thus placing its organized strength, its collective action, its vivifying *esprit de corps*, at the service of the State. Let the Bar of each community do its full duty and incul-

cate an appreciation of the practical necessity and moral grandeur of the public service being rendered by our judges, and the people will respond to its efforts and leadership if satisfied that its members are striving unselfishly and consistently for a competent, independent and incorruptible judiciary.

Whether we have the appointive or the elective system, the paramount duty and responsibility of the profession are clearly to cooperate in securing the appointment or nomination to judicial office of properly qualified lawyers and in firmly and steadfastly opposing the appointment or nomination of those who are wanting in the necessary fitness. Seldom will it be that an executive officer will appoint or that political parties will nominate for judicial office an unfit candidate in defiance of the objections and protests of a united Bar. Either system will work satisfactorily if the profession will do its full duty in this matter, and, exerting its influence persistently and unitedly to the utmost, uncompromisingly insist that competency, experience and character shall at all times be the indispensable and controlling factors in the selection of our judges.



## PROFESSIONAL FRATERNITY WITH CANADA<sup>1</sup>

ON behalf and in the name of the New York State Bar Association, I thank you for the privilege of joining in this tribute to the distinguished advocate and King's Counsel who is the principal guest of honor at this interesting banquet. We have known of Sir James Aikins as one of the leaders of the Canadian Bar, as President of the Canadian Bar Association and as Lieutenant Governor of the Province of Manitoba, which is so close a neighbor of the United States, and we are now glad to welcome him in the metropolis of the United States. The Bar Association, of which I have the honor to be President, hopes that Sir James will be able to accept our invitation to attend its annual meeting in January.

When your President, Mr. Oliver, invited me to join in this tribute, I hesitated to accept, and I stated to him as the reason that professional and public engagements would prevent my preparing anything that would be worthy of this audience or would fittingly express the spirit of professional fraternity that should exist between the Bar of Canada and the Bar of the United States. I know of no more interesting or inspiring subject. Here we stand shoulder to shoulder on

<sup>1</sup> Remarks as President of New York State Bar Association, at banquet of the Canadian Club of the City of New York, on November 17th, 1921.

this great continent, blessed with the same traditions and the same heritage of the common law, of representative government, of civil liberty and of sound principles of political justice, and with a common duty and a common responsibility to defend these institutions as established by our common forefathers by so much effort and sacrifice

Every tie that can bind one people to another binds the American people to the Canadians. Most of us on both sides of the line are of the Anglo-Saxon race. To most of us Americans, as to all Canadians, the Kingdom of Great Britain and Ireland has ever been the mother country. Your Magna Carta is our Magna Carta. And the quickening spirit of such a reunion as this finds its expression in the beautiful anthem which you have just been singing and a few lines of which I shall venture to repeat:

One race of ancient fame,  
One tongue, one faith we claim,  
One God, whose glorious name  
We love and praise

The Canadians and ourselves speak the same language, read the same literature, have the same ideals and standards of moral conduct, are governed by substantially the same principles of politics and jurisprudence, entertain the same fundamental conceptions of right and wrong and of justice among men and among nations. Indeed, no two nations in the world have any such essential identity of race, tradition, history, form of government, civic and economic problems, language and surrounding circumstances, nor so many ties binding them to

each other as have the United States and Canada. And that these beneficent identities and ties shall endure unimpaired for many centuries, Mr. President and Sir James, ought to be the fervent prayer of all.

I have long been profoundly convinced of the importance of closer relations between the Bars of the two countries, as well as between the two peoples. For many years, the talented and patriotic Secretary of our State Bar Association has been urging upon the attention of the profession all over the United States the duty of cultivating more intimate relations with the Bar of Canada in order that the profession may exert the influence of right it should exert. I refer to Mr. Frederick E. Wadhams of Alb ny, who is with us tonight at this table. He has rendered and is constantly rendering a really valuable and fruitful public service in promoting a sound entente between the two Bars, and he is justly held in high esteem therefor by our profession on both sides of the boundary line

We are, indeed, co-trustees of a common heritage, history and tradition which we of the Bar believe to be very sacred and very precious, and well worth giving all that is in us to perpetuate. Indeed, the hope of the future of democracy and free representative governments lies in having competent and trained leadership and statesmanship on this great continent on both sides of the line; and it is no exaggeration to assert that the necessary training, leadership and statesmanship will generally have to be found, if at all, in the legal profession. Lawyers in the United States as in Canada and England

have ever been the champions of the rights and privileges and liberties of the people and their safest leaders

The future of civilization throughout the world seems to be full of darkness. It is, therefore, of infinite importance to humanity that we of North America should maintain the highest standards of wise, enlightened and conservative government, of public service, of unselfish sacrifice, so that the whole world may resort to these standards for guidance and inspiration

Eight years ago, shortly before the breaking out of the World War, the American Bar Association held its annual meeting in Montreal. We were greeted with a most cordial welcome by the eloquent Prime Minister of Canada, Sir Robert Laird Borden, who is now the able representative of Canada at the Washington Conference on the Limitation of Armament. He spoke of the many ties of common kinship, common traditions, common form of government, comradeship and neighborliness that united us. I cannot find a better way to express the thought that is tonight in my own mind and convey it to you than to recall two of his pregnant and inspiring sentences. He said: "May the national life of each country be so guided that, while emulating each other in the development and conservation of our natural resources, in the growth and prosperity of our industries and our commerce and in every legitimate walk and field of national activity, we may find example from each other of much that is good and little that is evil." And then, after poetically referring to the many

streams on both sides of the boundary line that flow to mingle their waters in mighty rivers, he added. "So may the ideals and aspirations of the two nations flow in a gracious stream of friendship and peace during all the glorious years of the future" And these noble words of Sir Robert found ready echo in our hearts.

But above all, gentlemen, I regret that I have not had the leisure to prepare a fitting tribute to what Canada did in the World War. I hardly dare trust myself even to refer to the noblest and the most truly glorious page in the history of Canada. It is a splendid record of heroism and achievement: 500,000 soldiers sent abroad, with a roll of 2,885 officers and 53,514 privates killed, and it constitutes an imperishable monument of valor, heroism and sacrifice that will inspire men to noble and unselfish effort for many generations. They wrote high in the glorious record of human grandeur the splendid and heroic showing made at Ypres, at Vimy Ridge, and on so many other battlefields! I am very proud as a lawyer to read on that glorious page the names of many heroic Canadian lawyers, some of whom I knew, who, with gladness in their noble hearts, willingly sacrificed their lives in the holy cause. Long is the magnificent and heroic list of their names written indelibly on what Milton called in his immortal poem "the book of life"

For three anxious and awful years, we Americans envied the just praise and glory that was Canada's. For three years we looked on while the Canadians were making the supreme effort and the supreme

sacrifice No nation, small or great, has ever been grander or nobler than when Canada threw herself into the frightful, and what seemed to many, the hopeless struggle. She will never truly merit higher renown than when she staked her all in defense of England, of Europe, and of our common Christian civilization — than when she unselfishly and heroically faced destruction and misery, and showed again, on such a lofty and noble scale, that the spirit of the Light Brigade at Balaclava still lives in Canada.

Their's not to reason why,  
Their's but to do and die

And, gentlemen, in those dark and anxious days, which we can hardly recall without tears, millions of Americans south of the boundary line, whatever other emotions they may have had in looking with beating hearts upon the heroic valor of Canada on the battlefields of Flanders and France, felt prouder than ever before to belong to the same race.

Finally, is it not our plain duty to resolve, by the God of our common forefathers, that your dead and our dead shall not have died in vain? Such a pledge can be fulfilled only if we of this continent, Americans and Canadians alike, stand together, united, shoulder to shoulder, for right and justice, and collaborate unselfishly to secure and maintain the blessings that must flow from a just and lasting peace and from wise, just and equal laws impartially administered

## BANQUET TO MARSHAL FOCH<sup>1</sup>

**L**E PRÉSIDENT et le comité de l'Institut Américain du Fer et de l'Acier ont estimé que l'idée inspiratrice et le sens profond de cette manifestation ne sauraient revêtir leur plus ample expression que par l'intermédiaire de votre belle et poétique langue. Aussi m'ont-ils fait l'insigne honneur de m'inviter à être, en cette heureuse occasion, leur interprète auprès de vous. Mais il fallait vraiment beaucoup de témérité à un Américain pour oser prendre la parole en français devant le plus illustre des Immortels de l'Académie Française.

Vos hôtes de ce soir tiennent surtout à attester leur appréciation du fait que, pendant la Grande Guerre, la France défendit et la justice et le droit des gens contre le défi insolent de l'Empire d'Allemagne. Le Président de la République Française, M. Poincaré, l'a revendiqué avec une éloquence retentissante dans son mémorable message du quatre Août, 1914, au Parlement français. Comme il l'a si bien dit, "la France," dans la lutte qui s'engageait, "aura pour elle le droit, dont les peuples, non plus que les individus, ne sauraient impunément méconnaître l'éternelle puissance morale."

C'est pourquoi ces messieurs de l'Institut ont cru devoir associer le barreau américain à cette démonstration en votre honneur dans la métropole de la

<sup>1</sup> Remarks at a banquet tendered to Marshal Foch by The American Iron and Steel Institute at the City of New York on November 18th, 1921

nation, et c'est pourquoi ils m'ont choisi, et j'ai accepté l'honneur de vous adresser ces paroles en ma seule qualité de Président de l'Association des Avocats de l'État de New York

Monsieur le Maréchal de France, la manifestation de ce soir peut avoir pour vous et pour vos compatriotes une signification toute particulière. Cette réunion est certes plus qu'un banquet hospitalier. Devant vous, acclamant la France, glorifiant l'armée française, louant les services du grand généralissime des Alliés et du commandant-en-chef de l'armée américaine, devant vous se trouvent les vrais architectes de l'édifice national industriel de notre pays que vous avez tant admiré et tant loué. Nous vivons dans l'âge des sciences, de l'acier, de l'électricité, des affaires pratiques. Voici, autour de vous, les représentants des grands capitaines de l'industrie américaine, des grands ingénieurs, des grands hommes d'affaires, qui ont constitué la puissance matérielle, la richesse inépuisable, l'énergie inlassable et la force indomptable des Etats-Unis pendant la guerre. Voici les hommes qui ont rendu la victoire possible; car, sans leurs services et leurs produits, les Alliés étaient peut-être vaincus, comme vous l'avez vous-même bien généreusement déclaré.

Il y a, messieurs, un document historique qui devrait être placé en lettres de feu et d'or sous les yeux de tous les délégués à la Conférence Internationale de Washington. La leçon qu'elle enseigne pourrait vraiment servir de base fondamentale et de point de départ aux méditations de ces hommes d'état. Je parle de l'émouvante protestation de

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Gambetta et de ses collègues à Bordeaux, en février, 1871. Qu'il me soit permis de répéter ce soir et devant cette assemblée quelques phrases de cette déclaration prophétique. "Gardiennes des règles de la justice et du droit des gens, les nations civilisées ne sauraient rester plus longtemps insensibles au sort de leurs voisins, sous peine d'être à leur tour victimes des attentats qu'elles auraient tolérés. L'Europe moderne ne peut rester sourde aux protestations répétées des populations menacées; elle doit à sa propre conservation d'interdire de pareils abus de la force. Elle sait d'ailleurs que l'unité de la France [et nous devrions ajouter maintenant la sécurité de la France] est, aujourd'hui comme dans le passé, une garantie de l'ordre général du monde, une barrière contre l'esprit de conquête et d'invasion."

Je n'hésite pas à affirmer que les historiens et les philosophes de l'avenir jugeront bien sévèrement l'Europe du dix-neuvième siècle, qui deux fois, en 1814 et 1871, a permis le démembrement de la France au profit de la Prusse, et qu'ils verront dans la guerre de 1914 un fléau vengeur et une rétribution de la justice inexorable pour l'abandon de la France en 1871. Espérons que cette leçon ne sera pas de nouveau méconnue! Si pour le moment "la lumière luit dans les ténèbres, et les ténèbres ne l'ont point comprise," comme nous dit l'Évangile de Saint Jean, nous, les amis dévoués de la France, pouvons être soutenus, j'allais dire fortifiés, par la réflexion que le monde tâtonne encore dans les ténèbres du chaos qui suit la Grande Guerre, et que c'est toujours la nuit qui révèle au navigateur les étoiles invisibles au jour.

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Votre Excellence, vous pouvez retourner en France et dire à vos compagnons d'armes que, quel que soit le résultat de la conférence de Washington, la France n'a besoin ni de traité ni de contrat avec les Américains. Chaque phrase, chaque clause d'un traité peut donner lieu à de subtiles disputes de sophistes, de politiciens, de journalistes irresponsables, de meneurs insensés de la foule. "La lettre tue, et l'esprit donne la vie" Napoléon I<sup>er</sup> n'a-t-il pas avoué à la fin de sa carrière, si remplie de gloire et de désappointement, que ce n'est pas la diplomatie mais le sentiment, c'est-à-dire le cœur, qui gouverne le monde? Votre patrie héroïque a conquis à jamais le cœur de l'Amérique, et tant que la France méritera notre aide contre toute agression non-provoquée, elle l'aura sans traité et sans contrat. Le passé a forgé dans nos âmes une entente sacrée et suffisante, et l'a gravée dans nos cœurs. Le feu Archevêque Ireland a bien dit que c'est en lisant l'histoire de son pays que l'enfant américain apprend à aimer la France. Jamais nous ne saurions oublier l'aide généreuse, la sympathie, le dévouement et le désintéressement que le peuple français et le gouvernement de Louis XVI nous ont témoignés au début de notre histoire. L'amitié inébranlable des deux peuples, le respect et la confiance mutuels, les sacrifices et l'héroïsme communs sont vos garanties. Sur la tombe du Soldat Inconnu, symbole consacré de la grandeur naturelle de l'homme, les deux peuples ont renouvelé leurs liens et ressenti à nouveau l'union intime de leurs âmes.

Monsieur le Maréchal, vous êtes au plus haut

degré et à tous les titres le bienvenu parmi nous. Vous venez à nous plein de gloire. Vous avez écrit dans les annales du monde une page glorieuse et impérissable. Je cherche en vain les mots qui diraient combien nous vous admirons et vous aimons, et combien nous sommes émus de tout ce que vous avez fait, de tout ce que l'armée française a fait, de tout ce que le peuple français a fait pour nous autres d'Amérique, et de tout ce que vos compatriotes ont souffert et sacrifié.

On me prie également de vous offrir l'hommage de nos condoléances et de sympathie pour vos quinze cent mille compagnons de l'armée française qui ont donné leur vie pour la cause sainte des Alliés, faisant le suprême sacrifice sans plainte, sans hésitation, sans marchandage — pour l'humanité entière et pour le droit des gens. Tous dans cet auditoire, ces capitaines d'industrie et ces hommes d'affaires non moins que ces dames si gracieuses qui nous honorent et nous bénissent ce soir de leur présence, tous voudraient percer les nues de leurs acclamations pour vos poilus — puisque ce terme a trouvé dans la langue française un heureux accueil — vos poilus si héroïques, si dévoués, si patients, si sublimes! Nous glorifions vos poilus, cette virile personification des plus nobles vertus héréditaires de la race française, cette multitude de héros anonymes qui, si longtemps, dans l'enfer des tranchées, sous le soleil et sous la pluie, dans la poussière et dans la boue, dans toutes les saisons, ont opposé aux furieux assauts de l'ennemi leur vigueur inflexible et leur inlassable ténacité.

Hautement aussi nous voulons acclamer le peuple

français de l'arrière sans distinction de classes — ce peuple obscur et trop souvent oublié, qui, tout debout pour le droit, fut si courageux, si digne de ses soldats, si digne de ses aïeux, si digne de sa patrie.

Pieusement nous nous agenouillons devant les croix de vos soldats morts pour la France, morts pour l'Amérique, morts pour la cause sainte des Alliés. Nous leur rendons grâce de nous avoir démontré que l'homme pouvait être si brave, si noble, si désintéressé, que l'humanité pouvait être si resplendissante de courage, de vertu, de sacrifice et d'abnégation. Il a fallu, hélas, Monsieur le Maréchal, cette épreuve terrible et sanglante, ce nouveau Calvaire de tout un peuple, pour rappeler au monde la grandeur, la hauteur, la noblesse de l'âme française — de cette superbe élite de notre civilisation chrétienne. Vos morts, mon Maréchal, vivront dans nos cœurs tant que durera le souvenir de la France — c'est-à-dire, jusqu'à la consommation des siècles.

Messieurs de l'Institut Américain, en votre nom et au nom du barreau de New York, je salue le grand commandant-en-chef des armées fraternelles de France et d'Amérique, je salue l'armée française et ses poilus héroïques, je salue le noble peuple français, et je salue la France, vaillante, glorieuse et immortelle!

## CARDINAL MERCIER <sup>1</sup>

THE New York State Bar Association esteems it a great privilege to be able to participate through its President in this memorable function and in this impressive tribute to his Eminence Desideratus Cardinal Mercier, Archbishop of Malines and Primate of Belgium. The invitation extended to the Bar to join you was very welcome and very appropriate. The moral philosophy taught by Cardinal Mercier at the University of Louvain for so many years embodies the essence of those fundamental principles regulating the right and wrong in human conduct to which the ancient profession of the law, *la noblesse de la robe*, has ever been dedicated, and these are the principles that animate the laws of all civilized countries and everywhere inspire and enlighten men in the administration of justice. Blackstone declared in his famous commentaries that moral philosophy, or what in his day was called the law of nature, was the best and most authentic foundation of all human laws, and that, twenty-four centuries ago, the Greeks taught that jurisprudence, or the knowledge of the laws, was the principal and most perfect branch of ethics.

It would, indeed, be interesting and instructive to examine anew, had we the time to-day, the doc-

<sup>1</sup> Remarks at the unveiling of a bust of Cardinal Mercier, at the Library Hall of the New York University on December 17th, 1921.

trines that Cardinal Mercier, in the chair of philosophy at Louvain, taught to the students attending that famous university. A study of these lofty teachings would explain how natural it was that little Belgium should rise during the World War to the highest and proudest moral grandeur of national honor, unselfish patriotism and spiritual endurance of any country in history, and how natural that her scholarly and saintly spokesman should have been able to uplift his clergy and people above the desolation of their ruins and smoking ashes, inspire them with dauntless courage and endurance, and pronounce condemnation upon the violations of international law and the rules of civilized warfare by their brutal and conscienceless invaders .

Prior to the war, Cardinal Mercier had taught those who were to be the statesmen and leaders of Belgium in her trial, and through them her valiant and loyal people, that patriotism, with its deep sense of national honor, was the highest of the natural virtues, that the prince of philosophers of antiquity, Aristotle, had held disinterested service to the state to be the very ideal of human duty, that the religion of Christ had made patriotism and self-sacrifice for country a positive law, that the laws of conscience were sovereign laws subject to no compromise, that utilitarianism could not be tolerated as a rule of Christian citizenship, and that there was no perfect Christian who was not also a perfect patriot

And whilst emphasizing the fact that the sublime philosophy which he taught had developed under

Christian influences and should, therefore, properly be called Christian philosophy in contradistinction to pagan philosophy, Cardinal Mercier always instructed his pupils, as he sternly admonished his clergy and people during the World War, that they should bear in mind that Christianity had no monopoly of moral virtue, or constancy, or philanthropy, or patriotism in any of their several multiple manifestations, that modern thought owed an immeasurable debt to Paganism and Judaism, that the foundations of Christian philosophy were laid by the Hebrews even more than by the Greeks and the Romans, and that Christ had built upon the Ten Commandments of Mount Sinai, whose authentic record was to be found only in the Old Testament of the Jews. Truly, Cardinal Mercier taught as a philosopher not of the grove nor of the chair nor of the pulpit only, but of life in all its aspects among all faiths and among those who disagreed as well as those who agreed with him.

Much of the lesson of Cardinal Mercier's teachings and services will be lost if the students of our universities—who are the hope of the future—are not taught that the vivifying spirit of the splendid and stirring pastorals he wrote during the World War was but the natural and perfect fruit of years of study and teaching. The idea that great occasions create great men and as it were of themselves spontaneously generate great utterances is as untrue as it is pernicious. The power of a Mercier or a Foch is not created by any particular occasion nor by accidental circumstances, but it is the result of long years of faithful study by men

of genius seeking the truth for truth's sake It is this eternal verity that should be echoed and reëchoed within these and other halls of learning.

The mission of our educational institutions will in great measure fail if the inculcation of the noble principles of moral philosophy enunciated in Cardinal Mercier's eloquent pastorals during the World War is not hereafter made part of the curriculum of every American college and university. Those training for the profession of the law especially would find nowhere a truer exposition of the essential principles of jurisprudence than in the immortal messages Cardinal Mercier addressed to the Belgian people and the world under the titles of "Patriotism and Endurance," at Christmas, 1914, "An Appeal to Truth," written to the Cardinals and Bishops of Germany, Bavaria and Austria-Hungary on November 24th, 1915, "For our Soldiers," delivered in the Church of Sainte Gudule on the National Fête, July 21st, 1916, "Belgium Enslaved," on October 19th, 1916, indignantly protesting to the German Governor-General von Bissing; "Christian Vengeance," on January 29th, 1917, to the deans of his archdiocese for their guidance; and "Courage, My Brethren," on Sexagesima Sunday, 1917, on the eve of our intervention, in which he spoke so stirringly of the moral grandeur of his nation. These pastorals are now among the evidences of international and municipal law, and are classics of those fundamental juristic principles which govern the rights and duties of men and of independent and free peoples towards each other.

We may all be nourished and purified by the



constant study of these noble compositions, among the finest of our age, written in the midst of the utmost human physical suffering, misery and darkness. They eloquently preached the providential and sanctifying law of sacrifice and suffering, taught the soul of Belgium to pray and to have confidence in an omnipotent and just God, and encouraged and inspired countless millions of patriotic men and women in the countries of the Allies, as well as in Belgium, to struggle, suffer and endure until their faith in the ultimate triumph of right against wrong and the rule of law against arbitrary power should be realized in complete vindication and triumph.

Ninety years ago a great French philosopher, de Tocqueville, after a discriminating study of American institutions and culture, declared in his most famous work, "Democracy in America," that there was no other civilized country at that time in the world which occupied itself less with philosophy than the United States, that the Americans had no schools of philosophy, that they concerned themselves very little with the schools of philosophy which divided Europe, and that they hardly knew the names of those schools.

Cardinal Mercier was familiar with this criticism. I venture, however, confidently to assert that nothing in his visit to the United States gave him more delight than to find that de Tocqueville's criticism, if ever sound, was no longer true, and that we Americans of to-day, and notably in the universities and in the profession of the law, do cultivate the sublime moral philosophy which the

scholars of Europe have taught men throughout the world to revere.

It was principally because the American Bar recognized the exceptional importance and value of Cardinal Mercier's contributions to moral philosophy, and hence to jurisprudence, that when he was in New York two years ago, the Association of the Bar of the City of New York tendered him a reception and enrolled him as an honorary member of its professional body. This was the first time in the history of the Association, covering half a century, that any one not a jurist had been so honored. The instance was unique until last Tuesday, when Marshal Foch was similarly made an honorary member, in recognition of the fact that he and the armies under his victorious command had been, above all other purposes of the Allies in the World War, defending and maintaining the principles of justice and international law, as fully as had Cardinal Mercier in his immortal pastorals, already mentioned.

Therefore, it may seem to you fitting and proper to recall that on the occasion of this reception by the Bar Association in October, 1919, Cardinal Mercier declared that no compliment he had received in America had made a deeper impression upon him than this evidence that the American Bar appreciated not only the patriotic services he had attempted to render during the World War but as well the philosophy which he had taught at Louvain. He then earnestly requested that the original of a letter written by Senator Root, who was unable to attend the reception, might be given to him, and

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he told me that this letter would be cherished by him as a priceless souvenir of his immense gratification at the compliment paid him by the Bar Association. Expressing the unanimous sentiment of the members of the Bar Association, Senator Root among other things said:

I should be glad to testify to my admiration for that great Prelate, and to my gratitude for all that he has done and all that he has been in the terrible struggle out of which the world is now passing. I should especially like to support the motion upon which I understand your Committee has agreed, asking his consent to be made an honorary member of the Association of the Bar. Cardinal Mercier seems to me to be the chief outstanding figure illustrating and personifying the deep underlying truths for which the peaceful nations of the West fought the Great War, and for which millions of their sons laid down their lives. His country so free from selfish purpose and so staunch in maintaining its good faith against overwhelming odds was stricken down. No physical force remained to support him; but with high courage, possible only to a pure and sincere nature, amid privation and distress, and in imminent danger of death, confronted by a cruel and brutal despotism which held his body within its power, he gave voice to the conscience, the humanity and the sense of justice of Christian civilization. He was the embodiment of moral power standing alone and undefended. His clear and fearless appeals for the right against foul wrong stirred the better instincts of men the world over, and by the compelling force of a great example lifted them up to the level of sacrifice and daring.

The underlying truths of the moral world are the same in all relations. They are the same in the religion of which he is a minister, in the moral philos-

ophy of which he has been so long a teacher, and in the foundations of the jurisprudence which this Association seeks to make a living force in the administration of the law among a free self-governing people

By membership in this Association, Cardinal Mercier would but join himself to a group of his brethren co-workers with him in the same great cause, and how proud we should all be if upon our rolls we might be associated with his revered and ever-to-be-remembered name

As has been already and well said, the World War taught many lessons, and foremost among them the great lesson that it is the spiritual that in final analysis really counts, that the higher the moral standards and ideals of a nation the stronger it will be in the face of danger and misfortune, and that the true grandeur and ultimate strength of nations, as it is with men, are to be sought not so much in their armaments or wealth or physical powers as in their moral character and spiritual ideals

That is truly the particular lesson which this beautiful marble bust of Mr. Paolo will teach to all who behold it now and hereafter. Let it perennially convey its inspiring and, we pray, stimulating message and benediction to the students now on the rolls of this University and to future generations of students. Let it teach patriotic youth to seek truth, comfort and endurance by repairing to the standards of conduct and service which this great Catholic prelate raised above the darkness and horror of war. Let them kneel in spirit before this symbol, and venerate the noblest and most heroic

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teacher of moral philosophy that the world has yet known, who emerged resplendent with the light of truth from the greatest catastrophe and misery that ever befell mankind.

Providence wisely decreed that this great teacher of moral philosophy should become the very incarnation and personification of the heroic virtues of the Allies and the instrument of the complete vindication to all on earth of the truths of religion, incidentally teaching anew, of his own immortal country, as Cæsar taught the Romans — *Horum omnium fortissimi sunt Belgae*.

## THE PUBLIC SERVICE OF THE AMERICAN BAR<sup>1</sup>

MUCH that has occurred during the past year, the forty-fifth in the life of the New York State Bar Association, has impressively emphasized the public duties which are imposed upon the members of our profession and the public services which are being constantly rendered by lawyers throughout the United States. In truth, we may assert that public service still continues to be, as it was in the past, not only the controlling spirit and inspiration of the American Bar, but the source of its chief prestige, fame and glory. The criticism, even in our own ranks, that the spirit of public service is lessening is not warranted. At no period in our history has more or better public service been rendered by the profession than in our own day and generation. And it should be a cause of special gratification and pride to all the members of our Association to reflect that so many lawyers on its roll have in the past forty-five years served and are now serving the State and the Nation, and that so many others have ever been preparing themselves for public service. As has been well said, the lawyer's part in the governance of the State is not determined by nor is it confined to what he does visibly in the public eye. He often labors unseen

<sup>1</sup> Address as President, New York State Bar Association, at annual meeting held at the City of New York, January 20th, 1922 .

amid the numberless obscure who do so much of the real work of society. Study and preparation to serve may be in and of themselves a true and real public service.

The list of public servants from among the members of our Association has always been and is now a long and an inspiring one, and it affords many examples for the emulation of those who are to follow us. This is especially and conspicuously so at the present time owing to the splendid public services being rendered by three of the ex-presidents of this Association — Mr. Elihu Root, Secretary of State Hughes and Governor Miller. Equally conspicuous are the laborious, scholarly and unselfish services which are being rendered by members of this Association who are serving as judges in the federal and state courts, as legislators and in other public service. I shall, therefore, attempt to review, although necessarily in an incomplete and inadequate manner because of our limited time, some of the public duties and public services as well as some of the opportunities for public service of the profession in the United States at the present time.

A truly great advance was made in jurisprudence when last September the eleven judges and four deputy judges of the Permanent Court of International Justice were appointed by the Council and Assembly of the League of Nations. It was generally recognized that, as the creation of the court was in large measure the work of an American lawyer, Mr. Root, and as he was preëminent among international jurists, he ought to be appointed as one of the judges and then elected as the

first president of the court. But he had to declare his inability to accept because he and his friends believed that his age — he will be seventy-seven on February 15th — would not permit him to undertake so laborious a task and devote to it the continuous service for a number of years which is necessary for its success. In his place, it was natural and proper, if an American jurist was to be chosen as one of the judges, that it should be John Bassett Moore, already a Member of the Permanent Court of Arbitration at The Hague, and long distinguished at the New York Bar as a legal scholar, for many years Professor of International Law and Diplomacy at Columbia University, sometime Counselor for the Department of State of the United States, and author of scholarly digests on international law and international arbitrations and other valuable works.

The creation of this court of international justice is, indeed, a great and noble experiment. If successful, it will mark the commencement of a new era in history and jurisprudence, and realize at last what has been for ages the dream of publicists and philosophers. As John Stuart Mill declared sixty years ago, the Supreme Court of the United States in the exercise of its original jurisdiction over controversies between States was "the first great example of what is now one of the most prominent wants of civilized society, a real international tribunal." The new court, if duly supported by the United States, ought to become a great, efficient and beneficent moral substitute for force in the settlement of disputes among nations and of the



greatest practical influence in restoring peace and good will throughout the world.

The task before the court, however, will be an exceptionally difficult and delicate one, even more so than the task that confronted the Supreme Court of the United States when it was created one hundred and thirty-three years ago. It will require all the genius, scholarship, tact, industry and courage of a John Marshall to make this new international judicial tribunal a practical success. No greater or prouder service will ever be rendered to humanity and civilization by the American Bar than if the distinguished and scholarly jurist and publicist who sailed this week on his way to The Hague to represent our Nation, our constitutional system and our civilization in the new tribunal can be so fortunate as to be afforded the opportunity of helping to accomplish for the world what the Supreme Court of the United States has accomplished for the Federal Union of the several sovereign States of the United States. Happily, the necessary ability, scholarship, high purpose and courage are to be found in Judge Moore the event alone can determine how far fortune or fate will enable him to control or contribute to a satisfactory and beneficent outcome

The court will at first have to feel its way with slow and careful steps. It must create confidence in its learning, ability and impartiality, and be afforded the opportunity to show how international controversies can satisfactorily be solved by the judicial process and by the application of the eternal and vivifying principles of justice. The tribunal

has as yet no roots to enable it to grow, or to hold it fast in the storms that will inevitably assail it. It must evolve practical and acceptable rules from already established principles of international law and general jurisprudence. It has as yet no effective sanctions by which to enforce its decrees. It may find its solemn judgments defied at the outset as, for example, the State of Georgia defied the Supreme Court of the United States one hundred years ago in the controversy over the treaty rights of the Cherokee Nation of American Indians. But, nevertheless, if the court's reasoned decisions persuasively appeal to the judgment and conscience of the nations, as the lucid and eloquent opinions of Chief Justice Marshall appealed to the judgment and conscience of the States of the United States, the public opinion of the world will in time afford an effective sanction. No State of the United States in our day would, it is believed, venture to defy a solemn adjudication against it by the Supreme Court of the United States. The ill-advised counsel of one of our States, who a few years ago ventured to intimate in argument that the State he represented would refuse to carry out the decree of the court, brought forth, as will be readily recalled, an impressive admonition and warning from Chief Justice Fuller that "if such repudiation should be absolutely asserted, we can then consider by what means the decree may be enforced." No repudiation was attempted, and the State in question finally obeyed the decree of the court in that particular controversy.

The Permanent Court of International Justice,

provided it be allowed to function freely and to demonstrate its efficiency, may gradually induce respect for and acceptance of its judgments, if they are based upon just, lucid and convincing reasoning and sound philosophic principles, and it may thereby establish precedents that will come to be recognized and will commend themselves as affording advantages and protection as well as justice to the parties to any dispute submitted for adjudication and the assurance of like advantages and protection to all other nations under similar conditions

It is true that the United States has not yet been pledged formally to have resort to this new international court of justice, but after our long and leading record of advocacy of such a judicial tribunal among nations — in fact our delegation was the only one instructed to lay the project before the Peace Conference at The Hague in 1907 — it is surely improbable in the extreme that we shall continue to refrain from direct endorsement, support and participation. We can give that support and join the other forty-five or more nations by simply signing the protocol accepting the court and agreeing to contribute our share of the cost of maintenance, without committing ourselves thereby, directly or impliedly, to the League of Nations as at present constituted, or assuming any of its political responsibilities. A distinguished lecturer at University College, London, is quoted as recently declaring that "whether the United States entered the League or not, he was assured that she would never willingly let die a court in the creation of which she had played a great part, which formed a

replica of her own Supreme Court, and which constituted a living expression of her own high ideals."

The Carnegie Foundation for the Advancement of Teaching, under the title of "Training for the Public Profession of the Law," published last June an interesting essay, which reviewed the position that American lawyers occupy in our governmental system and discussed the subject of the public service of the Bar. This essay is stated to be the result of eight years of research and study. Its extensive treatment of the subject, the data which it gathers together, and its numerous suggestions have undoubtedly stimulated a revival of interest in the training for the Bar and a keener appreciation by the profession of its public function, opportunity and duty and of its historical relation to government and politics and especially to the administration and realization of justice. The hope is expressed in the preface written by the President of the Carnegie Foundation, Dr. Pritchett, that the essay "may serve at least some part in enabling the profession itself to discharge that serious and high duty to organized society which is necessary for human progress and for the preservation of civil liberty," and he promises that the essay will be followed in a short time by one dealing with the contemporary situation in greater detail.

The record of patriotic and unselfish public service by the American Bar during the Great War and its aftermath was excelled by no other class of our citizenship and by no prior generation of lawyers. The success of the administration of the

unprecedented Selective Service Act, the Espionage Act, the Trading with the Enemy Act, the War Insurance Act, the Soldiers and Sailors Relief Act, etc., was due principally to the voluntary services of lawyers. The extent of this patriotic and unselfish public service is generally unknown, unnoticed, and unappreciated, and the publication of full statistics would be astonishing to many.

The public services rendered in connection with the administration of the Selective Service Law of 1917 may be cited, although they ought to be made generally known by means of the publication of a government report with detailed data and accurate statistics. These statistics would show how, in every district of the country, lawyers, who could not serve in the Army or Navy by reason of age or health or otherwise, ungrudgingly gave of their time and utmost effort in patriotic and unrequited service to the country. Among such statistics of the service of the Bar, the State of New York would probably stand foremost. Take, for example, the District Board and the Local Boards of the Southern District of New York. This District Board had jurisdiction over a population of nearly six millions in the five counties constituting the Greater City of New York, that is to say, New York, Kings, Bronx, Queens and Richmond, and it was composed of thirty members, two-thirds of whom were always lawyers, with Judge Hughes at first as Chairman and later Judge Ingraham. These lawyers were Edgar M. Cullen, Lewis L. Delafield, William N. Dykman, Isaac T. Flatto, Edward T. Horwill, Charles E. Hughes, Edwin L. Garvin, Robert A.

Inch, George L. Ingraham, Ralph K. Jacobs, Louis Marshall, Arthur H. Masten, John S. Melcher, Samuel H. Ordway, Francis M. Scott, Edward E. Sprague, Luke D. Stapleton, Solomon M. Stroock, Charles Thaddeus Terry, Howard Townsend, Roberts Walker, William Ives Washburn, George W. Wickersham and Robert H. Wilson

The District Board served continuously from August, 1917, until January, 1919. During the first few months of its existence, it held three sessions weekly, and the several committees of five into which its membership was divided met daily except Sundays. From the beginning of October, 1917, the Board itself met five and sometimes six days every week, and was in session practically all day from ten o'clock in the morning until six o'clock in the evening, and sometimes later. An idea of the enormous amount of labor thus performed in the public service may be appreciated when it is recalled that substantially one hundred and seventy-five thousand cases or appeals were passed upon, that in practically every case a decision was prepared by one of the committees, which stated the nature of the question presented and the reasons for the determination made, that in many instances it was necessary to prepare detailed and sometimes elaborate opinions, especially where questions of law or of policy were involved, and that every case was voted upon by the entire Board. So far as I have been able to ascertain, not a single member of the District Board of New York accepted any compensation whatever for the arduous services they thus performed.

Equally patriotic and serviceable was the record of the Local Boards, of which there were one hundred and eighty-nine within this one jurisdiction. Each Local Board consisted of three members, two of whom were in almost all instances lawyers. Attached to each Local Board was a Government Appeal Agent, who also in every instance was a lawyer. Supervising all this work were two well-known lawyers, Martin Conboy and Mr. Justice McCook, who served untiringly and ably, and who did an immense amount of efficient labor, the former as Director of the Draft in this State and New York Representative of the Selective Service Headquarters, and the latter, before he entered the Army, as Chairman of the Mayor's Committee on National Defense. There was also a War Committee of lawyers, who volunteered their services and did a great amount of work in assisting registrants to fill out their questionnaires, and advising them as to their rights, under the chairmanship of Henry W. Taft, one of the ex-Presidents of this Association, who was assisted by many of the busiest leaders of our local Bar.

The extent of the labors of these Local Boards may be partially realized from the fact that prior to November 11th, 1918, the date of the Armistice, there were 1,420,024 registrants in the Greater City of New York, of whom 1,020,879 were classified, and that 192,497 registrants were in actual service in addition to an enlistment credit on the first draft of 32,429, making a total from New York City in actual service of 224,926. This figure, however, does not include many thousands of New

Yorkers who voluntarily enlisted in the military and naval service before they were required to register under the Selective Service Law.

What is true of the New York District and Local Boards was generally true of the other District and Local Boards throughout the State of New York, and indeed throughout the whole country.

These figures are now recalled, although partly appearing already in the records of the Association and probably familiar to many of its members, because it is constantly being charged by critics of the Bar that the present generation of lawyers is not rendering or willing to render public service commensurate with its duty and opportunity. The contrary is clearly the fact as any investigation would prove. But it may be noted here that the services thus rendered by the profession in the enforcement of the Selective Service Law and in fact in the enforcement of all the so-called War Acts of Congress have never received due recognition even by the Federal Government and certainly not by the public. An unnoticed, though generous, tribute by Provost Marshal General Crowder will be found in his report of December 20th, 1918, to the Secretary of War, from which I shall quote the following:

There is no brighter chapter in the history of the draft than that of the services rendered by the lawyers of the country. Legal advisers richly deserve the credit for upholding the tradition of American fairness in the administration of her laws. Not only did the expert advice accorded by the lawyers of the country contribute toward the expeditious creation of an army; but the impression



of equity engendered by their services was of inestimable value in developing and in maintaining a healthy morale in the body politic. On the honor list of the war must be numbered the thousands of lawyers and other public-spirited citizens, who, without emolument and without the glory of the battlefield, served their country by supporting and aiding in the administration of the most drastic legislation of the last half century.

The field before the profession for public service is constantly broadening with the expansion of governmental activities as our economic life becomes more and more complex, and the duty to serve is becoming more and more imperative. This is especially evident in the matter of state and federal legislation: it is absolutely necessary that it should be formulated by experts who can devote the time necessary for adequate and deliberate study of the increasingly difficult problems which must be solved. In New York, it is now practically impossible for our State Legislature, during the course of a session of three or four months, to study, comprehend, and deal intelligently and scientifically with the innumerable projects covering thousands of printed pages of bills which are annually urged upon its consideration. It was well said many years ago that, among the evils which oppress and perplex society, there are few greater than that caused by legislative expedients undertaken in ignorance of what the true nature and function of a statute are, and that the only effective remedy lay in an effort to correct this ignorance by the knowledge and service of experts.

The Bar alone can furnish the necessary knowl-

edge and expert service. Independent committees or commissions constituted of trained and competent lawyers must be enlisted to study these legislative problems and to prepare or supervise the preparation of adequate and scientific legislative measures. A spirit of continuous public service independent and outside of temporary public office must, therefore, be encouraged, developed and supported. Any really competent committee or committees of lawyers who would be willing to devote the necessary time to this great public service might earn a distinction and fame as enduring as that of Kent and Livingston. A few of the opportunities now before the profession as experts in legislation may be mentioned to serve as examples which should stimulate reflection upon the subject.

A complex and very difficult problem is constantly being presented by the necessity of delegating to administrative commissions and boards many governmental powers that can only be intelligently and safely exercised after extensive and exhaustive investigation of the facts; such, for example, as the regulation of public utilities. Legislative bodies cannot make such investigations or pass satisfactorily upon the facts in numerous individual and varying cases. These commissions and boards are clearly indispensable as instrumentalities of government; the policy of appointing them is a sound one, and they can and should be made permanent and really efficient bodies. They will probably be required in an increasing degree in the immediate future. A great service could be rendered by convincing the Legislature and the people that these

commissions and boards can be made much more effective and efficient if they are not authorized to exercise judicial functions, with the necessity for a procedure in each case consonant with the elementary principle that no man should be condemned or mulcted or compelled to do acts without an opportunity to be heard, and, if likely to be aggrieved, without a hearing before a competent and impartial judicial tribunal. The details of the proper machinery might be devised by a committee of competent, experienced and disinterested lawyers among our members.

Likewise, in regard to our tax laws and their due and economical administration what is greatly needed is a committee of competent, experienced and disinterested lawyers who will exhaustively study and review the whole system, and then devise scientific measures tending to readjust, coördinate and simplify the machinery of tax collection.

So, too, as to our procedure, which is as important in so many instances as substantive law. Seventy odd years of code practice have brought very little relief and little or no simplification of practice, or avoidance of unreasonable expense and delay. This disappointing result is due principally to legislative tinkering and attempts to tie the hands and limit the discretion of our judges. The Civil Practice Act is already about to be amended in numerous respects, and necessarily so. The appetite for amendment may keep on growing. Unless this tendency is checked, we must continue under the intolerable burden of constant inartificial amendments of our rules of procedure, which amendments

are frequently illogical and hastily and incompetently framed, and are sometimes enacted in order avowedly or covertly to meet some particular case or to serve some particular class or interest, without regard to their general operation and effect

Federal projects and legislation are constantly presenting equally important, difficult and vital problems that call for exhaustive investigation and study. There is a tendency growing stronger session by session of Congress to centralize governmental functions in Washington and to regulate local state affairs by federal legislation or federal constitutional amendments. That this movement involves the menace of undermining our federal constitutional system cannot be doubted. A more or less permanent committee of our members, who would study the questions arising under such bills as the so-called Smith-Towner Education Bill and the Sheppard-Towner Maternity Bill, might be able to render valuable service to the whole country. Notwithstanding all professions and assurances to the contrary, the former measure might injuriously tend to bureaucratize education, and the latter might bring about objectionable, if not intolerable, federal interference in our local domestic and social relations. Moreover, as these measures will inevitably involve great expenditures of money, a large part thereof, nearly twenty-five per cent., will be collectible in federal taxes from the State of New York, to the depletion of the resources otherwise available for our own needs and our own governmental purposes.

Another vital question of proposed legislation by

Congress is the scheme to develop the St. Lawrence Waterway, which Governor Miller is challenging and which will entail, for its initial stages, an expenditure of at least \$250,000,000, and ultimately half a billion if not a billion dollars, of which sums the United States will be expected and urged to contribute one-half. The plan, if executed, must inevitably result in the diversion of a large part of the present commerce of the Port of New York, which has already lost the shipments of cotton and largely of tobacco, and which will then lose most of the grain shipments. This diversion may mean the sacrifice of the benefits we had expected to derive from the Barge Canal. Nor is this merely an economic problem for engineers, shippers and merchants to solve: it presents a permanent and vital question of national policy and interest, which New York lawyers ought to assist in studying and presenting intelligently and broadly to Congress and the American public. Otherwise, a very grave mistake may be made.

Then we have the subject of substantive law and the perennial necessity for amendments by statute to remove anachronisms or to change archaic or oppressive rules, which no court ought to be allowed to alter simply to meet what are called "hard cases." It is not and should not be the function of our courts directly or indirectly to legislate in connection with the decision of pending controversies. Whatever changes in established rules are advisable should be formulated after a broad review and study of the whole question, and not in connection with some particular or narrow views or aspects

presented by the litigants in particular cases, which might disclose, imperfectly or not at all, pertinent circumstances and contingencies

The unstructive and stimulating article by Judge Cardozo in the December, 1921, number of the Harvard Law Review, under the title of "A Ministry of Justice," points out to us the great service that could be rendered by a committee of competent, experienced and disinterested lawyers, who would constantly be at work reviewing the practical administration of justice in this State, studying the decisions of our courts, and recommending appropriate statutory amendments to establish wiser general rules for the future.

This expert service can only be rendered by lawyers who will be willing to devote themselves for a number of years continuously to the study of these problems, just as in Rome jurists were constantly at work studying and solving the practical problems of the law then arising. Certainly, this expert service, which must necessarily be continuous, cannot reasonably be expected from public officials or members of legislative bodies, whose terms of service are comparatively limited and uncertain and whose opportunity for continuous service is so much dependent upon what may be fairly termed mere chance. Legislation is, undoubtedly, the great field of public serviceableness now open to the profession and the one most in need of its expert knowledge and its highest powers of analysis and discrimination in large as well as in trivial affairs. No statute ever stands alone without some relation to or effect upon other statutes or the established rules of law.

It is a difficult task even for the expert to frame a statute that will remedy one evil without generating another.

In a word, we of the Bar must serve, for we bear a heavier responsibility than ever before. We must not shrink from this responsibility and this call to public service. We must not remain out of contact or out of sympathy with the great public movements and the thoughts and aspirations of our fellow citizens. We must not follow but lead, fearless of criticism or misrepresentation or abuse, and free in this service from the seeking of personal advantage or gain. We must cultivate a steadfast determination and an unselfish ambition to serve for the sake of service, without expectation of public office, or public notice, or public fame, getting ample reward in the immense satisfaction that comes to men who are able to do or contribute to the doing of things likely to be beneficent and enduring and hence truly worth while being worthily done.

The particular subject of the public service, influence and prestige of the New York State Bar Association has been much in my mind ever since I received the honor of being elected its President, and it is a subject to which I had in years past given much thought and reflection, both as chairman of the Executive Committee and as a member of the Association.

I have felt that the State Bar Association should be made a much more influential and serviceable factor in our body politic and in our society than it has yet been, and that its field of public service

and usefulness should be much broader than that of any local bar association. In that spirit, I have been urging that the State Association should secure and maintain adequate and suitable headquarters in Albany, where its meetings could be held and where its committees and members could come together and confer. Such headquarters might readily be made the centre of the legal interests of the State and of scientific research in the field of jurisprudence and particularly of legislation. A working library of our own state reports and digests has already been offered, and in time reports of other States and helpful text books could be added.

At present, the Association has no headquarters, except in the office of its very competent and devoted Secretary, Mr. Wadhams, and, if, as was recently urged, a secretary should be chosen residing and practising elsewhere, there would then be no office or headquarters of the Association in Albany. In my judgment, any such removal of the office of the secretary of the Association to some place other than Albany would be most prejudicial to the best interests and the future welfare, influence and prestige of the Association.

On the other hand, if we had permanent headquarters in Albany suitable for such a professional organization, it would, I am convinced, add much to the prestige and influence of the Association as well as to the advantages and conveniences which members would derive from membership. As it is, there must needs be something lacking now, and in the past, which has deterred lawyers throughout the State of New York from joining the Association.

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After forty-five years, our membership is only 3,484 out of about 20,200 practising lawyers in the State. The nominal dues of five dollars yearly, or fifty dollars for a life membership, cannot be the reason why more than eighty per cent. of the lawyers of the State should hold aloof and not join us. Surely, the professional *esprit de corps* would prompt our brethren to seek membership with us if we were regarded as a body actively representing the whole Bar of the State. It must be because many lawyers see no benefit or prestige to be derived from joining our organization, which has no permanent headquarters anywhere and nothing to offer as inducement to join it except an annual meeting and banquet and copies of reports more or less scholarly, but, perhaps, not always interesting to them. Their views might very well be different if the State Bar Association had headquarters in Albany with a working library and facilities for meetings, conferences, etc., and if we were more actively laboring in the field of legislation and public service. The additional expense involved in maintaining suitable headquarters could be provided by increasing the number of members and by making the annual dues ten dollars.

The Association, moreover, should have some medium of communication with the Bar of the whole State, such as the Bar of New York City has in the New York Law Journal. This has long been recognized as one of the most useful legal publications. It now reaches more than two-thirds of our members. Its editorial management under Wilbur Larremore and Professor Wormser has been liberal,

impartial and scholarly in publishing matter of general interest to the profession with instructive comments. Its scope, or what might be called its field for want of a better term, might, perhaps, well be broadened so as to serve and interest all lawyers throughout the State, and it might be willing to publish short essays by lawyers. As Lecky pointed out many years ago in his "History of European Morals"—"Men whose professional duties would render it impossible for them to write long books, are quite capable of treating philosophical subjects in the form of short essays, and have in fact become conspicuous in these periodicals. There has seldom, I think, before, been a time when lawyers occupied such an important literary position as at present, or when legal ways of thinking had so great an influence over English philosophy, and this fact has been eminently favourable to the progress of utilitarianism." Many scholarly lawyers who are attracted by what may be called in Sir John Salmond's phrase "the literature of law," would be much more willing to write if they were afforded a ready medium of publication certain to reach a large number of the profession in all parts of the State. Some competent committee could readily control this privilege and prevent its abuse.

I have also felt that the State Bar Association should, so far as practicable, be representative of and speak for the Bar of the State on all appropriate occasions, and I have accordingly deemed it to be my duty to accept invitations to deliver addresses as your President as follows: (1) at the Conference of Bar Association Delegates, a section of the Ameri-

can Bar Association, held at Cincinnati, Ohio, on August 30th, 1921, the subject being "The duty and responsibility of the Bar in the selection of the judiciary;" (2) at the Republican State Convention at Syracuse on September 22d, 1921, on the subject that no judge, otherwise qualified, ought to be denied a nomination or renomination because, in the conscientious discharge of his judicial duties, he had written the opinion of the court in support of a ruling which was alleged to be unpopular with some class of the electorate; (3) at the annual banquet of the Canadian Club of New York on November 17th, 1921, in welcoming the President of the Canadian Bar Association, (4) at the banquet tendered to Marshal Foch at the City of New York by the American Iron and Steel Institute on November 18th, 1921, and (5) at the unveiling of a bust of Cardinal Mercier, the illustrious Primate of Belgium, at the New York University on December 17th, in the presence of the Belgian Ambassador and other distinguished guests.

These several invitations seemed to me to evidence a growing and very desirable recognition of the broad sphere of service and importance of the State Bar Association. Thus, for example, the invitation to address the Republican State Convention was a distinct recognition of the influence of our Association in a political matter affecting the judiciary generally and the Court of Appeals in particular; the invitation by such a numerous and important national organization as the American Iron and Steel Institute, to speak as the representative of the State Bar Association at an unprece-

dently impressive public tribute to Marshal Foch, was a gratifying and encouraging recognition by engineers, manufacturers and business men of the influence and prestige of our profession in the community, and the invitation by the Chancellor of the New York University to speak in its academic halls of the life and services of a great teacher of moral philosophy was evidence of appreciation of the scholarship of the Bar and its interest in all that tends to promote a truer appreciation of the philosophy and ethics that underlie our jurisprudence

In conclusion, I want to discuss two recent instances of unjust and unfair criticism of the profession and misrepresentation of its spirit of public service. As is familiar to all, such criticisms and misrepresentations have been generally current for generations, and have erected barriers of ignorant prejudice which have in some degree impaired the prestige and serviceableness of our profession. One of these recent instances is a criticism of the Bar by the President Emeritus of Harvard, and the other an attack upon Mr. Root in a book by an anonymous writer published last year under the title of "The Mirrors of Washington."

It must long be keenly regretted that the President Emeritus of Harvard University, so justly eminent and revered in academic circles, should be publicly quoted in the press of the country as criticizing the Bar in an address delivered on November 17th before the law students of the Bigelow Club of Boston University, and as declaring that there were many bad examples of a "degenerate practice" to seek or demand high fees among the leading law-

yers in large cities, that the real downfall in the legal profession had come about within the last twenty-five years, that the American people were facing no greater danger than the decline of the legal profession, and that lawyers were to be criticized for refusing to serve as judges because of the small compensation generally attached to judicial office. As should readily have been anticipated, this criticism of the Bar, attributed to so eminent an educator and observer of American affairs and not challenged by him as incorrect, was at once seized upon as interesting or sensational news and given publicity in the press; but, it should be added that Dr. Eliot's statements were challenged as of doubtful soundness and fairness by the "New York Times" in an editorial in its issue of November 19th.

Although the profession has become accustomed to misrepresentation by novelists and the inferior order of newspaper and magazine writers, it must cause a feeling of deep humiliation and pain that so eminent a scholar, who ought to be a guide to sound, just and fair public opinion, should be quoted as publicly joining the ranks of those who would detract from the prestige and honor of the American Bar, its ideals and its devotion to public service

Investigation of the facts, readily accessible to Dr. Eliot, would have shown him that in Boston and New York, as elsewhere throughout the United States, large professional incomes are exceptional, that they are usually to be found only in connection with extraordinary matters and corporate affairs in

which vast amounts and interests are at stake, that such matters generally involve great responsibility and require long and intense application and labor and the assistance of large staffs, and that many thousands of members of the Bar throughout our history have always rendered and are still conspicuously rendering public service for relatively little or no compensation and at the sacrifice of income, and have always done and are still doing a vast amount of private work for inadequate compensation or else for none at all.

Dr. Eliot's criticism of lawyers for not accepting judicial office was equally unjust and unreasonable in view of the fact known surely to all who care to investigate that most of our able and distinguished judges have very small private means and are serving generally for wholly inadequate compensation, that they could make very much more at the Bar or in any other professional work, and that they remain on the Bench from the most unselfish and the highest sense of public service. Lawyers of ability and of distinction are constantly compelled to decline public service on the Bench solely because their duty to their families and other private burdens and responsibilities preclude their undertaking what is generally to scholarly lawyers the most attractive and congenial of all professional services, that of administering justice.

Indeed, I venture to assert that in no other profession is there to-day a higher or finer spirit of public service or a more general willingness to serve without compensation in maintaining law and order, in promoting and upholding just legislation, in ad-

vising and protecting the poor, or in championing and defending the personal and property rights of those who are unable to pay adequate fees or frequently any compensation whatever. Exceptions, of course, there are: and the sordid, rapacious, selfish and indifferent are to be found in all professions; but it is clearly false reasoning to generalize from a comparatively few exceptions, and proceed to condemn a great and public spirited profession upon facts which, if accurate at all and not merely irresponsible gossip, are true only as to a very small and comparatively insignificant percentage of its members.

It should, furthermore, be borne in mind by all who attempt to criticize any profession that, as Viscount Bryce pointed out in one of his addresses while Ambassador to the United States, "To counsel you to stick to facts is not to dissuade you from philosophical generalizations, but only to remind you . . . that the generalizations must spring out of the facts, and without the facts are worthless."

In the recent book entitled "The Mirrors of Washington," to which I have already referred, Mr. Root's public career is discussed most unfairly and from an obviously prejudiced and hostile point of view for the purpose of belittling his accomplishments and disparaging him as a statesman. This book would be left to sink into the obscurity its superficiality, inaccuracy and misstatements merit were it not for the fact that reviewers in certain more or less important periodicals — for example, the "Political Science Quarterly" — have thoughtlessly treated the work as a reliable and permanent

contribution to contemporaneous history. Indeed, the reviewer in that particular publication has gone so far as to assert that the judgments of this critic "are certainly not very far wide of the mark" and that it is safe to predict that the history text-books of two hundred years hence will be influenced by part of what is contained in this publication.

The anonymous writer in question begins his sketch or characterization of Mr. Root by asserting that he "might have been so much publicly and has been so little," although few, if any, living statesmen have been more publicly, have rendered greater public services, or have contributed more to really constructive statesmanship than Mr. Root. It is claimed that Mr. Root "might have been many things," as if being United States Attorney for the Southern District of New York, Secretary of War, Secretary of State, United States Senator from New York, Chairman of the Judiciary Committee of the Constitutional Convention of 1894, President of the Constitutional Convention of 1915, member of the Alaskan Boundary Dispute in 1903, Counsel for the United States in the North Atlantic Fisheries Arbitration in 1910, member of the Permanent Court of Arbitration at The Hague since 1910, President of The Hague Tribunal of Arbitration between Great Britain, France, Spain and Portugal in 1913, Ambassador Extraordinary at the head of the Special Diplomatic Mission to Russia during the revolution there in 1917, and President of the Carnegie Endowment for International Peace, were to be regarded as insignificant and negligible public services.

It is stated in one part of the sketch that Mr.



Root "might have given to the United States Senate the weight and influence which have disappeared from it, if he had had a passion for public service," and in another part that "I doubt if he ever had a real love for public life." Yet, few, if any, Americans have ever had a stronger or more unselfish passion for public service, and it has been the dominant and controlling motive of his long, patriotic and unselfish life. It is declared that Mr. Root might have but has not made history, when as matter of fact, few men have ever made more history than he, if being the creative or the guiding mind in great historic events is what is meant by making history. In fact, his practical sagacity, his broad vision and his philosophic insight are represented and reflected in innumerable public measures and public declarations, such as the constitutions for the government of the Philippine Islands and Porto Rico, the famous instructions to the American Delegates to The Hague Conference of 1907, the reorganization of the War and State Departments and, as it is called, the "Statute of the Permanent Court of International Justice."

The perusal of the sketch in question will convince any reader that the author was deliberately seeking to discredit and depreciate not only Mr. Root but the legal profession itself. This critic's standard by which he would judge high-minded and patriotic lawyers when serving as statesmen can be gathered from his assertion that Mr. Root's "world court," that is, the Permanent Court of International Justice, "has little better hope of acceptance, for Mr. Hughes is not a voluntary sharer of glory."

To the mind of this erile of the Bar, Secretary of State Hughes would be capable of refusing on behalf of the United States to accept this great international court of justice because some one else might possibly share in the glory of establishing it! Mean, indeed, must be this anonymous writer's estimate of the patriotism of our Secretary of State.

Among other things, the writer states that Mr. Root's "greatest opportunity for constructive statesmanship was offered in the making of the New York State Constitution," and evidently he intends to refer to the Constitutional Convention of 1915. He does not seem to have heard of the Constitutional Convention of 1894, that framed the Constitution of the State of New York which is in force to-day, and has been for more than a quarter of a century. Yet, in the Convention of 1894, Mr. Root, as is well known, was chairman of its most important committee, leader of the Republican majority on the floor of the convention, and its most constructive member.

Moreover, if we are considering what is really "constructive statesmanship," the constitution framed by the Constitutional Convention of 1915 was, as a whole, the most progressive, the least partisan, and the best form of constitution ever submitted to the people of the State of New York. The fact that partisan politics and much misrepresentation prevented its adoption by the people at large does not deprive its framers, who included some of the ablest lawyers and statesmen in the State, of the credit of having formulated and embodied in their draft much that is entitled justly

and of right to be recognized as constructive statesmanship of the highest order. According to the standards of this critic, however, the character and quality of the work done by the ablest statesmen and jurists in drafting a complex constitution, difficult even for trained lawyers fully to comprehend without much study, are to be judged and determined solely by its success or failure at the polls.

To say, as this critic does, that Mr. Root had and has no real love for public life, that he lacks passion for public service, and that he turned to it late in life is simply shameful misrepresentation. No statesman of our day has had a more marked and inspiring passion for and devotion to public service than Mr. Root, and he was unselfishly serving with great success and distinction in public office before he was forty years of age as United States Attorney for the Southern District of New York. He was even then recognized as the coming leader of the Bar of New York, fit to succeed such great advocates as Mr. O'Connor, Mr. Evarts, Mr. Carter and Mr. Choate, and he has ever since been continuously rendering exceptionally valuable and creative public service in as well as out of public office.

It is to be regretted that I cannot on this occasion, because of our limited time, trace more in detail a great career of public and patriotic service, which extends over the past forty odd years, and that I cannot more adequately refute this anonymous attack upon a venerable statesman and jurist who is the undisputed leader of the American Bar. I would be very proud if I could be the medium of recording your measure and appreciation of Mr.

Root's talents, services and character for the information and inspiration of succeeding generations of American lawyers. In defending him, we would be but defending the reputation and upholding the prestige of our profession.

If we, his brethren and contemporaries at the Bar of New York, who know of his splendid record of public services and public achievement, do not defend his name and fame and honor, who will? Certainly, he will not do so; and a career of devoted and singularly unselfish public service and of unblemished honor, which is now among the glories of our profession, may be eclipsed by misrepresentation. If we acquiesce in these slanders of our public men, how will those who follow us judge of our generation and the repute of our leaders? But I venture confidently to assert, on behalf of this Association of his brethren at the New York Bar, who know his long and noble life for half a century, that if history records the truth of our day, it will rank Elihu Root in ability, scholarship, statesmanship, patriotism and character with Hamilton, Marshall, Kent and Webster. With him preeminently, as with all true lawyers, the controlling maxim ever has been,

*Pro clientibus saepe, pro lege, pro republica, semper.*

## PROBLEMS OF THE BAR<sup>1</sup>

A MOST encouraging development during the past year has been the evidence in many ways and quarters of a deeper realization on the part of the profession throughout the country of its opportunity and duty actively to promote the systematic clarification, improvement and development of the law and to undertake a broader range of interest and action in the field of public service. The necessity for study and constructive criticism by legal experts as well as for the coöperation of experienced lawyers in the solution of the manifold and complex problems of public law and practical government constantly arising in Nation and State is being more generally appreciated and is assuming a greater importance than ever before. The studies now conducted along these lines under the auspices of the American Bar Association and several of the state bar associations as well as of other organizations are most promising and seem likely to produce excellent and far-reaching practical results.

In February of last year a noteworthy Conference of Bar Association Delegates, representing a section of the American Bar Association, was held in Washington under the leadership of Senator Root and Mr. Chief Justice Taft, to discuss and consider the qualifications for admission to the Bar. This

<sup>1</sup> Address as President New York State Bar Association, at annual meeting held in the City of New York on January 19th, 1923.

meeting was followed by others throughout the country, inspired by the same purpose of promoting the efficiency and serviceableness of our profession.

At the Washington conference, Senator Root, in an exceptionally instructive and elevating address, pointed out that the events of the past twenty-five years had tended to create for the profession a new birth of duties and obligations and a new conception of duty not merely in connection with the administration of justice but in all branches of the public service. He declared that the new conditions of life which surround us present innumerable difficult and complicated problems of vital interest and importance, that they should be solved by the application to such new conditions of the old principles of justice out of which grew our institutions, but that in order to bring this about the work must be done by those who understand those principles, their history, their reason, their spirit, their capacity for extension, and their right application, and that the profession was the only body qualified to render the service.

And Chief Justice Taft endorsed the view that the field of service of the Bar was constantly increasing, that its members must not only have technical learning but the discipline of practical experience in the application of legal principles to controversies in courts and to administrative problems, and that the foremost consideration at the present time was whether the service and usefulness of the Bar to the community in the formulation and enforcement of the body of rules which should govern the administration of all branches of govern-

ment and the legal rights and duties of all classes in the community would be commensurate with the opportunity before and the duty plainly imposed upon its members

Under the auspices of the Association of American Law Schools and the Carnegie Corporation, a committee of jurists was organized in May of last year to draft suggestions for a permanent organization to promote the systematic improvement and development of the law, and this committee met in New York last week after six months of intensive study by its executive committee, and resolved to submit a report to a gathering of the American Bar to be held in Washington on the 23d of next month. This idea of a permanent and centralized organization seems to be the most practical and encouraging of all the movements so far initiated.

The underlying and impelling motive of these movements has been to bring about a more active coöperation on the part of the members of the Bar and coördination of the existing unsystematic and scattered efforts. Judge Cardozo strikingly pointed out in his stimulating article published in the Harvard Law Review under the title of "A Ministry of Justice," that the courts were not being helped by the Bar "as they could and ought to be in the adaptation of law to justice," that the "legislature informed only casually and intermittently of the needs and problems of the courts, without expert or responsible or disinterested or systematic advice as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend," that the work heretofore "done by

bar associations, state and national, as well as local, and other voluntary organizations has not risen to the needs of the occasion," that much of this work "has been critical rather than constructive," and "even when constructive, it has been desultory and sporadic," that "no attempt has been made to cover with systematic and comprehensive vision the entire field of law," and that the task ought not to be any longer "left to a number of voluntary committees, working at cross purposes." He, therefore, recommended that an official committee or council be created under some such name as a ministry of justice, which should be charged with the responsibilities of office and whose recommendation would come with official and consequently greater authority and command more general acquiescence on the part of legislative bodies, and he added the following admonition:

Certain at least it is that we must come to some official agency unless the agencies that are voluntary give proof of their capacity and will to watch and warn and purge — unless the bar awakes to its opportunity and power

It was because of these manifestations of the conviction that the profession should be more active and influential in bringing about the systematic and scientific improvement of the law and of the administration of justice and in helping to solve our increasingly complex governmental problems, national and state, that the Executive Committee and the Committee on Law Reform of this Association, meeting in joint session last month, prescribed that two principal subjects should be



submitted for consideration at the present annual meeting. the one a proposed organization of the entire Bar of the State into a more authoritative, influential and responsible body, and the other the creation of a division or section of the Association to consist of judges in actual service on the Bench and to be known as the Judicial Section of the Association. It was with like intent that it was further resolved that in his annual address the President of the Association should review the subject of the exercise of judicial powers by executive or administrative officers, bureaus, boards, or commissions

The report of the special committee on the proposed organization of the Bar, which was appointed at the last annual meeting, and the discussion this morning have shown that the matter of such organization is attracting much attention from the profession throughout the country. The fact is that, in many States and, for example, conspicuously in the State of New York, only a minority of the members of the profession belong to the state or local bar associations. The result is that these bar associations are not as useful and influential as they could be made, that they are not able to speak with any authority for the profession, and that they are not yet as effective channels as they ought to be through which to develop the necessary professional *esprit de corps* and to exercise the influence which the Bar as the only body of trained legal experts ought to have in each State. The subject is of vital and permanent importance to the body politic, and the discussion at this meeting and further

study by special committees and suggestions from our members will, it is hoped, bring about an organization of the Bar of the whole State of New York and thereby promote cooperation among the entire body of lawyers and result in the creation of a central organization authorized to voice the sentiment and direct the energies of the profession throughout the State. Whether membership in any such organization shall be made compulsory by statute, whether there shall be classes of members such as paying and non-paying, and whether the Association shall be vested with the regulation of admission to practice and disciplinary powers, as in other countries, present, it seems to me, very delicate and difficult questions which invite and should receive the most careful and mature study by our members and the fullest consideration and exchange of views before the Association shall be definitely committed to any particular project

Ten years ago, at its annual meeting held in September, 1913, the American Bar Association established a branch known as its Judicial Section, which meets annually with the annual meeting of the Association. This was the outgrowth of a conference of judges largely attended by the federal and state judiciary throughout the United States, including many of the most distinguished jurists in our country, the State of New York being represented by the late Chief Judge Edgar M. Cullen of our Court of Appeals, and the United States courts in New York by Judges Charles M. Hough and Van Vechten Veeder. The by-laws of the

American Association were amended to provide that such a section should be established for conference, discussion and interchange of ideas as to the duties and responsibilities of the judiciary. The enrollment of membership was limited to federal and state judges of courts of final appeal in the United States who were members of the Association; but it was provided that any judge of any court of record of general jurisdiction who might attend any annual meeting could exercise all the privileges of membership by a two-thirds vote of the members present at such meeting.

This organization was the first of its kind in our country, its operation has been satisfactory, and its work year by year has shown the wisdom of the original conception and its utility as an exceptionally practical and effective instrument to promote scientific improvement in applied jurisprudence. It has held eight annual conventions. The California State Bar Association has created a similar section of its organization, and reported the successful progress it had made to the American Bar Association at its annual meeting held in San Francisco last August. Other state bar associations are considering the subject.

It is the belief of many of our members who have considered the suggestion that such a Judicial Section of the New York State Bar Association, composed of the judges of our courts of record in active service, could be made of great utility and influence in improving the administration of justice. Judges who are daily engaged in the practical administration of justice are exceptionally qualified

to consider and recommend advisable or necessary reforms in procedure and substantive law and better able to do so than the general practitioner at the Bar. The learning and experience of such judges so availed of should tend to bring about a more logical and scientific development of our legal system. No other agency is as well equipped to render this important public service.

For example, the pressing and far-reaching problem of the "law's delays," which is now being debated in the columns of the New York Law Journal, could be referred to such a Judicial Section, if we had one functioning, and without doubt the practical daily experience of our judges would develop many suggestions in which the administration of justice could be simplified and rendered more prompt, efficient and certain.

The judges of the courts of record of the State have been invited to attend the discussion at this meeting of the subject of a Judicial Section of our Association, which is scheduled for tomorrow morning. From all over the State acceptances have been received and the proposal has been heartily approved. The judges' letters show a very keen interest in the proposition and a desire to coöperate and serve. As one of these letters pointed out, "such a section would serve as a sort of legal clearing house."

It has not been deemed advisable to submit at this annual meeting any definite amendment of the by-laws or any definite form of organization of a Judicial Section. Practical suggestions for such an organization will undoubtedly develop from the

discussion of the subject, and the by-laws can then be amended by the Executive Committee at any time on twenty days' notice. It may, for example, be deemed advisable to provide for an executive committee of the Judicial Section with sub-committees to deal with particular courts or particular subjects and sub-committees representing each judicial district. The main thing, however, is first to ascertain the general sentiment of our judges upon the practicability of this project, and the details can then be worked out by some organization committee. Unless the judges themselves are really convinced that some such organization would afford to them a practical medium for useful public service and unless also they are desirous actively to coöperate in the work of some such organization, it is, of course, useless to create the section.

The most striking political development of our times undoubtedly has been the phenomenal increase of the functions of government and the constant extension of the field of executive or administrative regulation with the consequent multiplication of public offices and instrumentalities. There is a clamor for public regulation, state or national, of whatever happens to interest or concern any body of the people who can make their desires or schemes politically vocal. The growth in this country during the past forty years of administrative regulation has been unparalleled, and its expansion and enveloping tendency are reasonably certain to continue.

Fifteen years have elapsed since the enactment in this State of the first Public Service Commissions

Law (Laws, 1907, ch 429), and the employment of these and similar administrative agencies has greatly increased. It is now realized from practical experience that if these agencies are to be of any real help and benefit to the community, the indispensable conditions are clearly twofold, first, special or expert knowledge which comes only from technical training and practical experience and which the public at large does not possess and cannot in the very nature of things be expected to possess, and, secondly, creation of a well-defined and scientific body of administrative law.

In the address delivered by Judge Hughes at our annual meeting held in January, 1916, he reviewed the problems presented by this tendency to increase executive or administrative agencies, and it will be instructive to recall his remarks and his warning. Among other things, he said

The ideal which has been presented in justification of these new agencies, and that which alone holds promise of benefit rather than of hurt to the community, is the ideal of special knowledge, flexibility, disinterestedness and sound judgment applying broad legislative principles that are essential to the protection of the community and of every useful activity affected, to the intricate situations created by expanding enterprise. But mere bureaucracy — narrow, partisan, or inexperienced — is grossly injurious, it not only fails of the immediate purpose of the law and is opposed to traditions which happily are still honored, but its failure creates a feeling of discouragement bordering on pessimism which forms the most serious obstacle to real improvements in the adjustment of governmental methods to new exigencies.

It is, however, extremely difficult to secure the services of competent, trained and experienced experts on such commissions, and we have not yet devised a civil service system which will induce men of first-class ability to make their life careers in the permanent public service, as in Europe and in British India. How we shall bring this about is one of the great governmental problems facing us to-day.

President Lowell of Harvard in his lectures on "Public Opinion and Popular Government" urged the recognition of the imperative necessity of having experts in our government service, national and state. As he remarked, we are now training men for all professional work except that of the Government. Speaking of administrative offices, he showed that "they require quite as great skill as many positions in private employ to which one would not think of appointing an untrained man," and that we are "intrusting such duties to a periodically shifting body of officials drawn for political motives from an inexperienced public." He added that "in many branches of the public service, central and local, we have no experts at all, no permanent officials playing an important part in the administration, and that even in those matters where experts are regularly employed, we rarely allow men to remain in office long enough to acquire that familiarity with their peculiar problems which confers efficiency and authority." And he declared that "the United States is the only great nation with a popular government to-day which has not permanent officers of that kind," and that "it is

they who keep the machinery of government elsewhere in efficient working order." Our own experience with the appointment of public service commissioners surely confirms President Lowell's criticism, for in fifteen years we have had fifty-four commissioners and their appointment has repeatedly been regarded as an object of political patronage rather than an opportunity for securing efficiency and economy in the regulation of public utilities.

We lawyers might do much to educate public opinion in this respect. We are better qualified to lead in these matters than any other class. We have stood altogether too much aloof from these public problems, and we are subject to just criticism for failure to help with constructive suggestions. As I had occasion to urge several years ago and now repeat, a joint committee representing the bar associations of the State could render a great public service by undertaking a thorough, impartial, and exhaustive investigation of this whole problem of administrative law and regulatory commissions and bringing home to the people the crying need for experts in our public service and permanency of tenure. This is a task which is well worthy of our profession, and it is one which would enable us to render a great and patriotic service to Nation and State alike. Progress and efficiency in the future will be found only in such expert service and permanency of tenure.

In the exercise of the function of regulation and supervision of business enterprises by administrative officials, the legal rights of individuals and corporations are being constantly and unavoidably



affected, and a tremendously important and far-reaching question is how far these legal rights can be safeguarded and how far administrative bodies should be permitted to adjudicate conclusively upon such rights, or, in other words, should be vested with authority to exercise judicial power. There is no subject which should be of greater interest or concern to our profession at the present time than the inquiry whether executive and administrative bodies can properly exercise both administrative and judicial functions in the regulation of the branches of business now being placed under their supervision and control.

Let us, for example, consider the workings of the Interstate Commerce Commission, the Federal Trade Commission, the State Public Service Commissions, and similar bodies. In the performance of their administrative duties, in the championing of the interests of the public or of particular complainants or classes, which they properly feel are especially confided to their care and protection, in the prosecution of investigations and complaints instituted by themselves, in their quite natural endeavor to establish the correctness of their own preconceived and frequently predeclared views and policies, are they qualified for the impartial performance of judicial duties and the determination of questions affecting the legal rights of parties before them? Do they not, inevitably, even with the best intentions, deny to parties that fair trial before an unbiased and competent tribunal to which everyone — every class in the community — should be entitled as of absolute right? Men

exercising judicial power ought, of course, to be unprejudiced; yet at present many administrative bodies such as the above-mentioned commissions are necessarily being placed in the false position of acting as party and judge in controversies which they are called upon to determine.

Under the existing system, the sitting commissioner or the commission often becomes what a distinguished English writer has called "that judicial monster, a judge in his own cause" In nearly all controversies before these commissions, on one side will be found their own counsel and their own subordinates as the prosecutors or adversaries of those whose property rights may be impaired or destroyed by the particular decision. Constituted as humanity is, commissioners with the fairest of intentions must be unconsciously biased in favor of their own contention, their own complaint, and the testimony or arguments of their own associates and subordinates. It has been asserted that frequently commissioners, federal and state, direct the preparation of the evidence to be adduced before them and privately confer in regard to the particular matter or complaint in hand, not only with their own legal advisers appearing before them as counsel for the commission, but with their own employes or experts or other persons who are to testify before them as witnesses under oath. Under such circumstances few, indeed, would be the commissioners who could remain impartial and unbiased. They necessarily become partisans. The whole atmosphere surrounding the hearing becomes the very negative of what a body administering impartial

justice according to law ought to be. Is it not unreasonable to expect in connection with any hearings so held that impartiality, open-mindedness, disinterestedness and unbiased judgment which are indispensable in a just judge and which are essential to fair play and even-handed justice?

I do not mean to contend that all executive or administrative action which happens to affect private interests and to depend upon controverted facts ought to be subject to review by the courts. Any such doctrine would paralyze government. The necessities of efficient government and historical usage uphold the denial of a right of judicial review in many cases. There are matters which, although depending on the ascertainment of the facts by evidence adduced before administrative officers, must in great measure be left to the discretion of such officers, who ought to be experts familiar with the problems they are handling, so long as they act within the authority vested in them by the law. If private rights are violated, this may often be unavoidable, because the balance of practical convenience and public necessity may imperatively require the sacrifice and the disregard of the safeguards afforded by judicial review. The danger of possible abuse of discretion by administrative officers will not in such cases offset the value of non-technical procedure, simplicity, directness and promptness of action. The extent of judicial review must often depend on the nature of the subject matter or interests dealt with by the administrative body. But I venture to assert that, in cases involving personal liberty and vested prop-

erty rights or arising in the regulation of business enterprises and the rates to be charged or service to be rendered to the public, there should generally be a right of judicial review, and that in such cases the findings of any administrative body on controverted questions of fact ought not to be made conclusive any more than they should be made conclusive with respect to questions of law or as to their own jurisdiction.

As is well known, most of the cases before these commissions relating to the regulation of business enterprises, whether as to services to be rendered or rates to be charged to the public, or methods of carrying on any particular business, depend in final analysis upon the facts. If the findings of the commissions upon the facts are made conclusive simply because there may be some evidence tending to sustain them, their decisions in such cases may constitute final adjudications not subject to any adequate judicial review. The parties affected are thus practically denied any day in court. On the other hand, if the findings of fact of a commission are simply *prima facie* correct, or create only a rebuttable presumption in their support, as in our Public Service Commissions Law of 1907, no unreasonable prejudice to any party will probably result, for such a rule may operate no further than to shift the affirmative of the issue and the burden of proof. This will, generally speaking, before a competent judicial tribunal, amount to no more than a matter of the order of testimony or procedure.

The present system, alike in federal and state commissions, is unnecessarily cumbersome because

of the obligation to base all findings upon evidence tending to sustain or support them, and consequently proceedings before such bodies have become very complicated, dilatory and expensive. The commissioners may have the most accurate expert and special knowledge of the situation presented by any matter or complaint before them, they may have a few weeks before concluded a thorough investigation of the subject in all its aspects after much expense and long delay; they may know all the material facts with reasonable certainty; prompt action may be advisable, and they may be fully prepared to act, yet they must, nevertheless, in each case proceed anew to hear and consider and rule upon evidence to sustain each finding. Hence, the great mass of information and special knowledge which the commissions are laboriously and at great expense accumulating year after year is often not available to them as the basis of an order in any contested case. It results that there is now an immense waste of time in taking evidence before these commissions in every contested matter.

If, however, these commissions were not bound to take evidence in each case in order to support every separate material finding of fact, they might have far greater liberty and facility of action and become much more efficient and expeditious administrative bodies. A recital by a commission of the ultimate facts which it finds and upon which it bases or proposes to base its ruling and order in any particular case ought to be sufficient, provided the right be granted to any party affected to challenge and meet with evidence any facts so recited,

and thereupon to have a hearing or rehearing before the commission. But with or without evidence to sustain them, the commission's findings of fact should be *prima facie* correct; in other words, instead of compelling the commission to adduce evidence in every separate proceeding to sustain each of their findings of fact, the burden should be upon the person or corporation regulated to show that the facts found are as matter of fact contrary to evidence duly adduced.

Powers of investigation by such commissions must necessarily be continued so far as needful to obtain the knowledge required and consistent with constitutional limitations. Any one interested or affected should be compellable and should have the right to furnish evidence on any such investigation, but the procedure could be simplified and made very much less formal than at present. The limits of this address do not permit me to consider in detail how this suggestion could be practically worked out; but I believe that the present practice before such commissions could in many cases be made more simple and expeditious and less technical whilst preserving the right to judicial review on the facts as well as on the law.

Nearly ten years ago Professor Roscoe Pound of Harvard, in a scholarly and philosophical series of papers published in the *Columbia Law Review* under the title of "Justice according to Law," traced the rapid development of administrative bodies of all kinds in this country and the incidental recurrence to executive justice, and warned of the dangers inherent in any attempt to vest judicial

powers in such bodies. Among other illuminating and instructive comments, he made the following:

Granting that administration should be left to administrative officers, what are the advantages of executive justice in the determination of ordinary controversies and the application and enforcement of the rules of private law? Those which are claimed for it are those which are claimed for justice without law—directness, expedition, conformity to the popular will for the time being, freedom from the bonds of purely traditional rules, freedom from technical rules of evidence and power to act upon the everyday instincts of ordinary men. Obviously, therefore, its defects are those of justice without law, and need not be repeated. A few points, however, deserve especial emphasis. Directness and freedom from forms and from traditional rules have disadvantages as well as advantages. Forms serve a useful purpose in the administration of justice so far as they compel deliberation and by so doing guard against suggestion and impulse and “mob-mind” and insure the application of reason to the cause in hand. Again, where laws are administered by laymen without conscious attempt to work out a system of reasoned interpretation and application, the results are quite as unsatisfactory, though in another way, as when they are administered with pedantic narrowness by lawyers . . . This is even more true where decision of controverted questions of facts is involved. A rational method of determining such questions is no more to be attained by turning them over to the unfettered common sense of a lay magistrate than by the other extreme of imposing an unreasonable burden of technical rules upon the trained judge. Yet, if we are to go to extremes, the advantage lies with judicial justice, however hampered, since, at least, its course may be predicted and the technical rules which obstruct its

course may be mastered. In a modern state, executive justice, beyond what is involved in a proper balance between law and administration, is an evil, even if sometimes a necessary evil. It has always been, and in the long run it always will be crude and as variable as the personalities of officials. No one can long be suffered to wield the royal power of deciding without fixed principles according to convictions of right but one trained to subordinate impulse and will to reason, disciplined in the exercise of reason and experienced in the difficult art of deciding controversies. If we did not know it, legal history could teach us that no one may be trusted to dispense with rules but one who knows the rules thoroughly and knows how to apply them on occasion. Hence time has always imposed a legal yoke upon executive justice and has turned administrative tribunals into ordinary courts. A law-ridden people, finding that, in a time which demands positive action, the legal system furnishes only checks and safeguards, may for a time throw over justice according to law and seek relief outside of the law. But so used justice without law can be no more than a temporary expedient in the world of to-day. Modern constitutions do more than reflect eighteenth-century political theory when they forbid executive justice and provide for judicial determination of the limits of executive action. These provisions reflect experience of many peoples under most diverse conditions. It is no accident that France, which was the first country to develop modern administration, is more and more turning its administrative tribunals into ordinary courts.

Although the principle of the separation of governmental powers was long observed in this country and generally recognized as a sound governmental policy, we must perceive that it is being



gradually undermined in national and state affairs as a result of impatience with the delay necessarily involved in being just according to law. As is familiar to all, the Federal Constitution separates the judicial power by expressly vesting it in courts of justice constituted of judges appointed during good behavior, and, if that provision be followed according to its intent and spirit, the separation would be maintained in national administration. The New York State Constitution, however, does not separate the judicial power from the other branches of government, and therefore in this State it may be held that administrative boards can be vested with broad judicial powers, and that their rulings, even on questions of law, may be made final and conclusive without any right of appeal to the courts. The Supreme Court of the United States has declared that neither the Fourteenth Amendment nor any other provision of the Federal Constitution forbids a State from granting to an administrative body judicial powers and final determination of questions of law or of fact, and that it is sufficient if parties affected or aggrieved are afforded a hearing before final determination. How far this doctrine has been limited by the decision in the case of *Ohio Valley Co. v. Ben Avon Borough*, 253 U. S. 287, 289, is yet to be determined, but it may be concluded that this decision does not prevent a State, if permitted by its own constitution, from vesting full judicial powers in administrative bodies and constituting them judicial tribunals, whose adjudications shall be final and conclusive. It is for that reason and to prevent

any such grant of judicial power to administrative bodies that the Judiciary Constitutional Convention of 1921 recommended that the judicial power of the State of New York should be vested in the courts.

It is interesting to note that the same tendency to invest administrative boards with judicial powers and to supersede and undermine the law courts by bureaucracy has also been developing in England and has been challenged there as involving a grave menace to the principle of the supremacy of the law and to the rights of the individual. Master of the Rolls, Sir H. H. Cozens-Hardy, several years ago referred to the tendency in recent years to remove from the courts matters which properly belonged to them, and to intrust them to governmental departments, and he solemnly expressed the view that this was a great mistake. The British Constitution Association issued a protest against this practice, characterizing it as vicious and insisting that bureaucratic decisions are certain to be biased and unscientific. Many lawyers in England have declared that trials before such tribunals are a denial of the fundamental right or privilege of a fair trial before competent and impartial judges guaranteed to Englishmen by Magna Carta.

In writing the introduction to the latest edition of his "Law of the Constitution," Professor Dicey, the great English authority on constitutional law, took occasion to deprecate the growth of bureaucracy in England and the decay of the great English principle of the rule of law administered by courts of justice. He compared the development in

England with that of France. He showed that, whereas in England the recent development, contrary to all constitutional precedent, had been away from judicial control towards an arbitrary bureaucracy, in France just the opposite development had been taking place. There the tendency had been to check and control administrative officials by means of responsible judicial bodies which protected individual rights against the encroachments of administrative bodies. Professor Dicey added: "And it may not be an exaggeration to say that in some directions the law of England is being 'officialized,' if the expression may be allowed, by statutes passed under the influence of socialistic ideas. It is even more certain that the *droit administratif* of France is year by year becoming more and more judicialized." Thus, in England, as in America, the people are impatiently turning from the courts of justice as the bulwark of their liberties and the only fit instruments for curbing executive tyranny, and are placing arbitrary and autocratic powers in the hands of administrative officials frequently untrained in the law and uncontrolled and unchecked by judicial principles and traditions.

Those who advocate conferring judicial powers on administrative bodies without right of review in the courts frequently refer to the efficient French administrative departments as an example of what may be accomplished by administrative officials. It is said that in France the courts are not allowed to interfere with administration, and that there the individual is afforded no right to question in a

court of justice the orders or acts of administrative bodies. This statement, however, does not convey the whole truth even if it be literally accurate. Although the famous act of 1790, passed during the French Revolution, which prohibits the courts of justice from interfering with administrative officials, is still in force, there is nevertheless an appeal from administrative officials to what are in reality administrative courts constituted of trained judges and then an appeal to the French Council of State, the highest administrative tribunal in France. This Council of State in one of its branches is now organized as an independent court of justice entirely separate from its organization as an administrative body. In France to-day, the individual whose rights have been illegally disregarded by an administrative official may carry his grievance to an administrative court and then to the Council of State as the court of last resort, and thereby be afforded a review of his case by impartial and learned judicial bodies acting according to orderly judicial procedure and reasoned judgment, based on established rules and precedents. The Council of State has been so liberal in finding grounds to protect the rights of individuals and in checking or restraining arbitrary, oppressive, or unjust action on the part of administrative officials that to-day the humblest citizen of France, at a trifling expense, may judicially question the act of any administrative or executive official, from a constable to the President of the Republic. In the protection of individual rights, the French Council of State has repeatedly annulled acts and orders of the highest

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governmental departments and even of the President himself. Indeed, under the administrative system as now developed in France, the private citizen has probably a greater measure of protection by judicial bodies composed of trained judges against arbitrary, unjust, or illegal acts of government officials than in any other country. In a word, the tendency in France has been toward effective judicial control of administrative bodies.

The use of the word "administrative" is apt to mislead us. Though in their origin the present French administrative courts were strictly part of essentially administrative bodies, to-day they are truly courts of justice offering all the guaranties afforded by fixed rules of law applied and enforced by learned, impartial and experienced judges. The people now look with confidence to these tribunals for the protection of their legal rights and regard them as essentially judicial bodies. It has been found in France, as it will be ultimately found with us, that private rights can be afforded full protection by independent judicial tribunals without unduly interfering with or hampering administrative efficiency.

It is impossible to-day and in this address to deal satisfactorily or comprehensively with such an important and far-reaching subject as the exercise of judicial power in the regulation and control of business enterprises by means of administrative bodies. I can do no more than suggest points for study and reflection. The theory of regulation by commissions is inherently sound and the practice necessary. Legislative bodies such as Congress or our State Legislatures cannot act in these matters as intelli-

gently and efficiently as a board or commission of practical experts familiar with the business to be controlled or regulated. The people must be protected against those who are engaged in business enterprises in which the public is interested and upon which the public must depend. The managers of these businesses generally have it within their power to oppress the public and make a prey of their necessities. But it should be recognized that such administrative bodies are not reasonably fitted or qualified to exercise judicial power. The corporations and individuals whose businesses are regulated, whose earning capacity may be destroyed, or whose property may be practically confiscated by regulation, ought to have a day in court as of right before an impartial judicial tribunal composed of men learned in the law and bound impartially to decree justice according to law. If this involves delay and expense, it is far better to submit to that inconvenience than to withdraw the protection of the law from any class in the community. The example or precedent of such denial would be altogether too dangerous. Neither expedition nor economy has resulted or ever will result in the long run from disregarding fundamentals and confusing powers which in their nature and in their proper exercise are radically different and require different treatment and different points of view.

I am not prepared to say that the time has yet come for the creation of special courts similar to the French administrative courts, although I am convinced that this will ultimately be found to be

advisable. This aspect ought to be exhaustively studied by experienced and competent lawyers. It is by no means certain that the ordinary law courts are in all cases the best bodies for adjudicating upon the errors of administrative bodies. Some exceptions are undoubtedly necessary. The exercise of quasi-judicial powers by administrative officers in certain fields can never be wholly eliminated. However, generally speaking, it would be better and more satisfactory in most cases of regulation to afford full review of all essentially judicial questions in our regular courts, in view of their learning and training, their long-established prestige, their traditions and their moral authority. We might well create special divisions of such courts to hear and determine controversies relating to orders or regulations of our public service commissions or other regulatory bodies. The judges sitting in these divisions would thus acquire special knowledge of the problems being dealt with by the commissions. The decisions of our ordinary superior courts, federal and state, in cases involving the most complicated problems ever submitted to commissions, such as the Minnesota and Missouri Rate Cases (230 U. S. 352, 474) and *People ex rel. Kings Co. Lighting Co. v. Willcox* (210 N. Y. 479), long since demonstrated that they are fully competent to deal with all questions likely to arise from time to time in the administration of federal and state commission laws.

The subject of administrative law in its various branches has for many years been studied at Columbia, Harvard, Chicago and other universities,

and much valuable and instructive matter is being produced. The labors of such scholars as President Goodnow of Johns Hopkins, of Professors Pound and Frankfurter of Harvard, of Freund of Chicago, of Parkinson of Columbia, and the test of practical experience will lead in time to a comprehensive treatment of the subject and a definite and scientific body of American administrative law which can be made to embrace within its scope most governmental activities and yet fit into our political and constitutional system, without denying the right to a day in court before competent and impartial judicial officers whenever the nature of the subject matter involved reasonably requires or warrants the guaranty of justice according to the law administered ultimately by a court of justice.

Finally, I venture to predict that the continuance of the present tendency towards vesting judicial power in public service commissions, unless checked, will impair the practical utility and effectiveness of such commissions and may ultimately bring about the defeat of the experiment of thus regulating business enterprises. The American people will not long be content with having their legal rights conclusively determined by administrative fiat, but will turn back to the courts of justice and insist upon a judicial trial, with its guaranty of a fair hearing, and to impartial tribunals and reasoned judgment consistently applying ascertained general principles and precedents and excluding official discretion with its danger of oppression and action dictated by caprice, prejudice, or passion. They will not permanently tolerate uncontrolled power



in any form, however temporarily expedient or benevolent. The corresponding danger of ultimate bureaucratic tyranny is altogether too great. In the last analysis, the survival of liberty in self-governing democracies and what our fathers termed regulated liberty will depend, as English and American history teaches us, and as Montesquieu taught the Founders, upon the separation and complete independence of the judicial power in Nation and State and upon its freedom from executive and political control. Although we should recognize that there is much to improve in the administration of justice by our courts and much ground for criticism not only of the law's delays but of its uncertainty and complexity, nevertheless, as Professor Pound has admonished us, "the remedy, if the existing law fails to secure new interests which clamor for recognition, is not to throw over law and set up a new dynasty of personal sovereigns. It is rather for lawyers to face the problems presented by the rise of new interests resolutely and intelligently . . . Our only permanent reliance can be in thoroughgoing study of the interests to be secured and of the possible modes of making them effective through law, and a steadfast belief that justice is still the greatest interest of man on earth. . . . Our ambitious schemes of social reform call, not for less law, but for more law. The call of the time is not for less training and less specialization on the part of those who have to do with the administration of justice, but for more "

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